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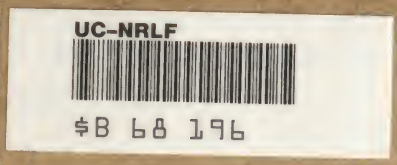

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The Treaty of Amity, Commerce, and Navigation between Great Britain and the United States

THE JAMES BRYCE HISTORICAL PRIZE ESSAY FOR 1906

BY

ROBERT R. RANKIN

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THE TREATY OF AMITY, COMMERCE, AND NAVIGATION BETWEEN GREAT BRITAIN AND THE UNITED STATES.[1]

ROBERT R. RANKIN.

Taken singly, the year 1794 contains the period of greatest peril to the American union and its international relations which the annals of this country have yet recorded. Only eleven years had passed since the treaty of peace was signed, closing a vital revolutionary war which had drained the resources of the colonies to their utmost. During the intervening period of those eleven years one government had been established which had proved so inadequate in two of its branches that it was laid aside, leaving only hesitancy and doubt of a union for the new government to meet. The constitution of this new government had been in force but five years and had by no means convinced the people that it was qualified to administer to their diverse interests. It certainly did not embody the unqualified ideas for government of any one man, or of a state, or of a national party, and in so far as it failed in this, so far was it carefully watched by the statesmen who had formed it.

Such were the internal conditions. Abroad a bitter war existed between England and France and with these two countries our international relations were primarily connected. With England, the mother country, there had been

[1] Bryce Historical Prize Essay, 1906.

a recent war, and since independence had been granted, her attitude had been haughty and overbearing. France had been the staunch ally of the American colonies during the period of the Revolution and now expected reciprocal aid and attention. Racial pride and national interests demanded an amicable relation with Great Britain; sympathy and national gratitude demanded every attention in behalf of France. President Washington in his appreciation of these conditions aptly described them:[2] "To sum the whole up in a few words: I have never, since I have been in the administration of the government, seen a crisis which, in my judgment, has been so pregnant with interesting events, nor one from which more is to be apprehended." * * *

Of all the policies which presented themselves to this government but one met with national approval. That was: The United States can not remain uninterested and oblivious to the opportunities now presented; it must take some definite stand and maintain it. What this policy should be was the vital question in the crisis of the administration.

As a solution of this question and as one of the interesting events from which much was apprehended the administration decided upon negotiations with England through its envoy extraordinary, John Jay.

But for the success of this envoy at the British court in London, the early history of this government would have to be rewritten. As is shown in the following pages, war, in all likelihood, would have resulted, and for war "the United States was never more unprepared." A conservative statement maintains that the independence which the colonies had so lately won would have suffered greatly. It is hardly less conservative to say that independence would have suffered irredeemably.

It is with these negotiations that this essay has to deal, and a word as to its sources and method of development

[2] Washington, "Writings," Vol. XI, p. 48. *Cf.* Gibbs, "Memories of Wolcott," Vol. I, p. 327.

might be in keeping with a better understanding of the subject.

In regard to sources, this essay has been unusually fortunate in having a large field of original material. The greatest contributors to this field have been the American State Papers, Foreign Relations, containing all the original documents relative to the negotiations, and the Annals of Congress, containing all the speeches which embody the views of this as well as foreign countries. Besides these, there is a great amount of indispensible material which is minor only in the quantity, not quality, which it contributes. In this class are noted the diaries, letters, speeches, and writings of contemporary statesmen who rank among the greatest which this or any other country has had the fortune to possess. George Washington, Alexander Hamilton, and James Madison might head this list. Upon such primary sources is the evidence in this essay based. All interests contained herein have been taken from first-hand materials and the great amount of secondary works appended have been used only in cross reference and most general considerations. There has been much subsequent periodical literature which is of such slight importance as hardly to merit attention. However, one exception must be made to the general condemnation of periodicals, and that is in favor of the contemporary newspapers published at Philadelphia, *The American Daily Advertiser* and the *Aurora.*

In regard to the development of this subject, several methods presented themselves. But upon a summary view the material divided itself most naturally into three parts. The first part consists of a chronological and narrative history of the events which surround the making of the treaty. The second part contains an exposition of the principles involved in the negotiations and in the treaty itself. Finally, there appear the subsequent results of these negotiations with an explanation of the objects effected by that docu-

ment. And there are added other interests which resulted from this special mission to England but of which there is absolutely no trace or even suggestion in the articles as finally ratified by the two nations.

The Treaty of Amity, Commerce, and Navigation between Great Britain and the United States, or as it was popularly called, Jay's Treaty of 1794, affords a study of the political, commercial, and international interests during the first years of this government.

I.—THE NARRATIVE HISTORY OF THE TREATY.

History, by its definition of evolutionary processes, is best illustrated in its narration, but its narration in this place may serve an additional purpose—that of a general understanding of the most unpopular treaty which the United States ever had the misfortune to contract.

1. Some of the conditions which led up to this treaty were of long standing. Many of them had existed before the Revolutionary War. Likewise, there were some arising from later reasons. There had been an attempt to settle many points of difference in the treaty of peace in 1783, and the breaking of certain provisions[3] in this treaty was one of the main causes demanding a settlement. The retention of the forts[4] in the northern and western parts of the United States acted as "a thorn in the side of the young republic," and another action equally painful was the ruinous commercial policy which had been adopted and enforced by the British Orders in Council. These had worked special injury in the Admiralty Courts of the West Indies, where hundreds of ships, particularly from New England, had been seized and condemned for carrying French produce or provisions to French ports. The impressment of American seamen was another source of irritation. All these direct

[3] *Vide* Appendix E.
[4] *Vide* p. 18.

causes were harped upon by the spirit of war on the part of the New England Democrats. The Republicans over the country adopted retaliation in the form of a suspension of all commercial relations with Great Britain. Both policies pointed directly to war, which was a thing to be dreaded in the extreme, owing to our new government and complete lack of preparation for any encounter whatsoever. Against this popular demand for war, which was voiced in many assemblies and made them scorn British relations and rejoice in French victories, there was another party which realized what war would mean for the United States under existing conditions. This party adopted the policy of peaceful negotiations. At the head of this conservative party stood President Washington. To his clear insight and statesman-like conduct more is due than to any one man of his time. Of his conduct more will be said hereafter, but at present let the words of the British chronicler suffice: "Happily for that country (America) and Great Britain itself, General Washington still presided over American councils."[5] The policy of peace could be assured only by immediate negotiations to relieve the tension upon strained national relations. The United States had but recently enjoyed the honor of receiving an embassador from Great Britain. Mr. Hammond was a man whom Fisher Ames properly estimated as lacking in prudence and moderation.[6] Our own minister at London, Mr. Pinckney, was a man of prejudices and strongly pro-Gallician, although, as Washington declared, his confidence in him remained undiminished.[7]

2. Conditions demanded a special envoy, and Washington reasoned that such a representative would serve more properly to impress upon the minds of the British administrators the seriousness and dignity of the occasion, and to insure the British Government that the executive of the

[5] Annual Register, 1794, p. 148.
[6] *Vide* "Works." Letter to C. Gore, March 5, 1794.
[7] Message to Senate, April 16, 1794.

United States intended if possible to maintain neutrality.[8] With an eye to this purpose, his choice first rested upon Alexander Hamilton, whose work had shown him a man of no mean ability. But Hamilton had many and some bitter enemies, and Washington was warned by Monroe that a treaty satisfactory in most respects would find opposition on the prejudiced grounds that it was Hamilton's work. Hamilton was deeply grieved at being laid aside, but proposed the name of John Jay to Washington, who immediately assented. The appointment was laid before the Senate on the 19th of April, 1794, and three days of stormy debate followed before the Senate confirmed the nomination. The final vote stood eighteen in favor and eight against, with Aaron Burr and James Monroe of Virginia at the head of the opposition. Jay was holding Circuit Court at Philadelphia when his nomination was confirmed, so no time was lost in notifying him of his appointment. That he saw the difficulties before him can not be doubted. He writes: "I will go, foreseeing the consequences to my personal popularity. * * * The good of my country I believe demands the sacrifice and I am ready to make it."[9] He writes to his wife upon the 15th of April, 1794, that his dilemma lay between personal and public considerations. On the 19th he writes in further explanation: "No appointment ever operated more unpleasantly upon me, but the public considerations which were urged, and the manner in which it was pressed, strongly impress me with the conviction that to refuse it would be to desert my duty for the sake of my ease and domestic concerns and comforts."[10] His personal disinclination was not without foundation, for no portion of his career has been subject to more unsparing criticism than that on which he was about to enter.

The spirit of the country was not so much in opposition to Jay or a treaty which *he* might negotiate as it was to *any*

[8] Message to Senate, April 16, 1794.
[9] Johnston's "Life and Correspondence of John Jay," Vol. IV.
[10] Johnston's "Life and Correspondence of John Jay," Vol. IV.

treaty with Great Britain. This spirit found expression in many ways and some of these were in personal attacks upon the envoy-elect. This popular spirit is amply illustrated in a motion passed in the House of Representatives two days after Jay's appointment. This motion was a prohibition upon importation of produce of British growth or manufacture after date. The very apparent purpose was to render Jay's mission nugatory. This motion passed the House and was only stopped in the Senate by the casting vote of the Vice-President. However, Washington in all probability would have vetoed it.

Jay accepted his appointment to England without vacating his office as Chief Justice of the United States, although he never afterwards occupied that position. This was, however, one of the great objections to his appointment, raised by the party in opposition. It is indeed difficult to answer, for only imperative necessity and a lack of occupation for the Court would authorize this infringement upon the independence of the judiciary. A second objection was to the monarchial principles which he is said to have entertained. But when this country was debating on whether to receive a minister from the French Republic or a regent from the monarchy of France, Jay promptly decided to receive no regent from a monarchy unless it was one *de facto*. A third objection was his indifference to the navigation rights of the Mississippi; a fourth, his attachment for England; and a fifth, his aversion to France. The latter, in the light of subsequent events, seems to have been more properly grounded. A sixth objection was a purely political one with no international interest. It is best explained in the conflicting views of the north and south. Mr. Adams expressed the sentiments of the north when he wrote that if Jay succeeded in his undertaking it would be a strong recommendation for the Presidency. This was what the southern states feared as being most directly in opposition to their hopes of placing Thomas Jefferson in the Presidential chair.

Jay realized this sacrifice. He said: "No man could form a treaty with Great Britain, however advantageous it might be to the country, who would not by his agency render himself so unpopular and odious as to blast all hopes of political preference."

Throughout these early years of our government a constant conflict will be noticed between what the popular parties desired and the policy of the administration. The nomination of Jay is a point in evidence. Madison wrote to Thomas Jefferson on the 11th of May, 1794, stating that this appointment had undergone "the animadversion of the press,"[11] and that this action together with the measure for a discriminating duty on British tonnage would be a powerful blow upon the popularity of the President.

The men in power had confidence in John Jay. His qualifications "included an unyielding integrity, a keen sense of justice, an unusually sound judgment, if not brilliant; freedom from prejudice, and a lofty spirit of pride in his country's honor."[12] He also had experience—to him perhaps better than any other man was known the entire history of our relations with Great Britain. Contrasted with Hamilton, he possessed more experience, by his work in the negotiations of the treaty of 1783, greater popularity, moderation and freedom from partiality toward either Great Britain or France. Hamilton advocated his appointment as "the only man in whose qualifications for success there would be thorough confidence and him whom alone it would be advisable to send."

Jay departed for England in the ship "Ohio" on the 12th of May, 1794.[13] His party consisted of Colonel Trumbull, who was to act as his Secretary, and his son. Upon his departure Jay addressed about a thousand of his fellow citizens who had collected at the wharf to wish him success in his undertaking. Cheers were given and a salute fired

[11] Madison's Letters and Other Writings, Vol. II.
[12] American Historical Reports, 1901, Vol. I.
[13] *American Daily Advertiser*, May 14, 1794.

as his vessel passed out of North River. His voyage was made very unpleasant by seasickness, and he was in ill-health when he arrived at Falmouth on June 8, 1794.

3. The quiet journey across England rested him and he arrived in London June 15; rented his apartments in the Royal Hotel, Pall Mall, and asked for an early interview with Lord Grenville, the British negotiator. William Wyndham, or Lord Grenville, son of the projector of the Stamp Act, had been appointed by the King because he was a good statesman, well educated, able in ministerial duties, stately in bearing, uncompromising in principle, firm in his convictions, high toned and honorable. Hardly had Jay landed at Falmouth before opposition was started against him in America, first in New York. This was not contrary to his expectations, for he wrote to Washington on September 13, 1794, "that attempts will be made in America to frustrate this negotiation, I have not the most distant shadow of a doubt. I brought this belief and opinion with me."[14]

Jay presented his letters of credence to His Majesty George III, and the Queen, in politic conformity with British politeness. This courtesy and good manner was later made a point of special objection by the American opposition. His reception was so courteous as to reassure the administrations of both countries. His letters are filled with favorable reports.[15] Without difficulty or delay he entered into negotiations with Lord Grenville, which they agreed, upon Jay's suggestion, were for the most part to be verbal.

4. Certain maritime and commercial controversies were first taken up, followed by negotiations upon treaty violations. From this point the negotiations became more in detail. As a settlement was neared, projected treaties were written up by each and submitted to the other for objections and eliminations. By this process articles which could not

[14] Johnston's "Correspondence and Public Papers on John Jay," Vol. IV.

[15] Appendix A (2).

be agreed upon were thrown out and certain modifications in other articles were finally settled upon. Throughout the entire negotiations the utmost harmony prevailed and expressions of great respect were exchanged even after Jay had returned to America. Upon Jay's first meeting with Lord Grenville he expressed sentiments very favorable to his character and manner, adding that "if his disposition is hostile he conceals it admirably." Jay's own conduct was outlined by himself in a letter to Randolph, to acquire "the confidence and esteem of the Government, not by improper compliances, but by that sincerity, candor, truth and prudence, which in my opinion will always prove to be more wise and effectual than finesse and chicane."

A reading of the treaty convinces one of the dictatorial attitude assumed by the British Government. This can be accounted for as the result of a treaty with a more powerful nation, by the necessity which Jay felt of forming a treaty of some kind, and by the previous knowledge Grenville had of Jay's character and how best to approach him. The statesmen of that day did not live so much in the light of the public press. Therefore, the little biographical sketch[16] of Jay's character, penned by Mr. Elliott, a former Lieutenant-Governor of New York, and sent to Grenville by Lord Auckland, was of great use. It was of much greater

[16] This was sent on the 22d of June, 1794, in anticipation of Jay's mission. Its accuracy and the purchase it gave Grenville in approaching Jay authorizes it in full: "I have known Mr. Jay's character intimately from his outset in public life. He was originally under me in adjusting some boundary lines of the Provinces. He has good sense and much information; has great appearance of coolness, and is a patient hearer with a good memory. He argues closely, but is long-winded and self-opinioned. He can bear any opposition to what he advances, provided that regard is shown to his abilities. He may be attacked by good treatment, but will be unforgiving if he thinks himself neglected; he will expect to be looked up to, not merely as an American agent, but as *Mr. Jay*, who was in Spain, who has been high in office from the beginning. On the whole, they could not have made a better choice, as he certainly has good sense and judgment, both of which must have been mellowed since I saw him; but almost every man has a weak and assailable quarter, and Mr. Jay's weak side is *Mr. Jay.*" Grenville Correspondences, Vol. II, p. 578.

value when Mr. Jay had declared his attitude to be one "rather to accommodate than convict or convince."

The negotiations finally came to a satisfactory settlement upon the 19th of November, 1794. The document was signed at St. James Square, where most of the negotiations had been carried on.

The original and duplicate copies of the treaty were sent by two different packets from London to America.

They raced across the Atlantic to place the treaty in the hands of the President before Congress adjourned. The first packet to reach the American shore arrived at Norfolk, Virginia, where a special messenger was dispatched and arrived at Philadelphia, mud-bespattered, frost-bitten, and fatigued, on the 7th of March, 1795. Congress had adjourned seven days before.

5. A special meeting of the Senate was called for June 8, 1795, and as soon as a quorum was present debate began upon the treaty. Ratification was advised on June 24. At the beginning of the session a motion was passed that all discussion be kept secret. So the debates were never entered in the proceedings of the Senate. The fact that neither the discussions nor the treaty was made public aroused the suspicions of the Republicans. People all over the country desired to see the treaty, and when it was withheld some of the most vile and violent opposition was commenced before the content of the treaty was even known. The country was divided by party animosities and political questions. The opposition to the treaty, instigated by the tyrannical madness of French influence, gave expressions to feelings which the press of this country has never again ventured upon.[17] It can be described as an importation of that spirit which agitated France.

This spirit was first directed against that conservative and cautious body, the United States Senate. Upon their advocation of the President's ratification the condemnation

[17] *Vide* Appendix C.

of that body was exceedingly severe, and all the force of the opposition was turned against the President to supplicate, persuade, and threaten him into a refusal of its ratification. Washington carefully listened to all the arguments which were brought to bear and after mature consideration signed the treaty as it had been handed to him by the Senate, that is, with the exception of the twelfth article, regarding West India trade. The crisis was reached at the moment of this decision, but minor questions which were involved agitated the public until long after.

Notwithstanding the admiration and respect in which Washington was held, it can not be supposed that he would escape any of the severe criticism which was given so generously by the party in opposition upon any one in favor of the ratification of Jay's treaty. Among unjust criticisms was the suggestion of the impeachment of the national executive as a remedy for the absolute disrespect of the desires of that party which called itself *the people.*

While these party contentions were going on Jay returned to America, May 28, 1795. He had remained in England because his health would not permit a winter voyage and that he might attend to any matters which should arise from the consideration of the treaty in America. He received a warm welcome from his fellow-citizens, more warmly tendered because of his election two days before his arrival to the governorship of the state of New York. He thereupon resigned the Chief Justiceship in the United States Supreme Court, June 29, 1795. This strange contradiction on the part of the citizens of New York to Jay's national condemnation serves to prove that it was not Jay, personally, but the treaty itself which was so despised.

It is quite characteristic of the man that in the fierce war of speeches and pamphlets which continued during the period of ratification Jay took absolutely no part. He did not write even an anonymous letter or by word or action influence the President or Senate in a matter whose inter-

ests he had more carefully studied out than any other statesman in America. The opposition to the treaty reached its height during the debate in the Senate. It was caused by the untimely publication of the treaty. Notwithstanding all the secrecy which was attempted by the Senate, some one saw a copy which the Senators were given for consideration and later wrote down for publication all he could recall from memory. It was so advertised in the *Aurora* of Philadelphia. Naturally there were many inaccuracies in the statements, and Stephen Thompson Mason, a strong Republican from Virginia, determined that the people should not be misled. Contrary to the resolution of the Senate, he sent his copy to Benjamin F. Bache, and on the morning of July 2, 1795, the treaty appeared in full in the *American Daily Advertiser*. Pamphlets containing the treaty were immediately struck off and packages of these were sent, wet from the press, to every large town in the union. At noon on July 2 they could be bought in New York City and on the 6th of July they were for sale in Boston. Mason's praise was sounded far and wide as a Senator with the interests of the people at heart.

The popular opposition to the treaty was strongly revived when the bill for appropriating necessary funds to put the treaty into execution came before the House of Representatives. The sentiments of the party were: We have appealed to the Senate and President alike to refuse the ratification of this treaty. They have alike ignored the will of the people. Let us now appeal to these men who are our direct representatives and therefore have interests in common with the people; who are not afraid of war with Great Britain, and who are in sympathy with the independence seekers of France. The result was the first instance in the history of this country when the discretionary power of the House of Representatives in regard to treaty appropriations was strongly and enthusiastically maintained by a majority of the House. The precedent here established is left for discussion under constitutional law.

Congress was called for November 3, 1795, and the House reported a quorum for business open the 4th instant. The Senate did not have a quorum until the 19th, when they were jointly addressed by the President. A few minor matters were settled and the main topic of the session was taken up—an appropriation for the Treaty of Amity, Commerce, and Navigation with Great Britain. Debate upon the treaty began with a motion by Edward Livingston of New York, calling on the President for the instructions to Jay as Envoy Extraordinary. This was passed March 2, 1796. President Washington refused to comply with this request in a document dated March 30, 1796. The debate upon this question continued from March 7 to April 7. Finally the treaty was debated article by article and as a whole, and the congressional records in this particular give some of the best speeches in the history of its congressmen. The appropriation was finally granted in an act passed May 8, 1796. The persistent advocates of the treaty had won. Their victory was based upon sound reason and unflinching toil. The last appeal of the opposition, that is, to the sentiments of the House, had failed. To illustrate how bold some of these appeals to sentiment were, on the 4th of January, 1796, when the House had met to consider the appropriation for Jay's treaty, a beautiful French flag was presented to the government. It was received with loud acclamation. After the failure of sentiment, the cause and party retired from the field, leaving only its unenviable record for history.

II.—THE POLITICAL HISTORY OF THE TREATY.

The political history of the treaty deals with the declaration and establishment of principles which had either been violated or which were to govern the conduct of the two nations in the future. They are here regarded as first discussed and then embodied in an international contract as adopted by the contracting governments. While treaties

may be formed during the most amicable relations, the treaty of 1794 had, as its great cause, the settlement of differences.

1. For years a treaty of commerce had been desired with Great Britain. It was felt that for want of it, trade was "manifestly declining" and might be "entirely ruined."[18] Attempts had been constantly made to negotiate a treaty. The Peace Commission of 1783 was so empowered, but was unsuccessful. Special powers were granted to the American Commission, consisting of Adams, Franklin, and Jay, ten days after the signing of the treaty of peace. Their success was no better than that of the Peace Commission. Power was then granted to John Adams when he was sent as minister to London in 1785, to Governor Morris when he succeeded Adams in 1789, and to Morris' successor, Thomas Pinckney, in 1792. An attempt to force England to agree to a treaty was part of a policy of the existing administration. This is illustrated by the arguments in all legislative bodies for a more energetic government which would inspire a dread reprisal and by the bills before the House of Representatives in the session of 1794, discriminating between nations having and not having treaties with this government, by levying heavier duties on those countries not protected by special regulations.[19] On March 26, 1794, an embargo was laid against British ships for thirty days, and at the end of that period renewed for another thirty days. The day following the levying of this embargo, March 27, Mr. Dayton of New Jersey moved to sequester all money due British creditors and use the same as an indemnity for the losses of ship owners. On April 21 the Republicans moved to suspend all commercial relations with Great Britain. These were motions which in the parlance of international law are termed "measures short of actual war."

[18] Letter of Stephen Higginson, April, 1784. Annual Report of American Historical Association, 1896, Vol. I.

[19] State Papers, Foreign Relations, Vol. I, p. 711. *Cf.* Lalor's Cyclopaedia of Political Science, Vol. II, p. 654.

Therefore, the determination to send a special envoy to England was a bold and decided resolution, fraught with severe reproach and censure, but years later culminating in good. The policy was carried out in the face of strong opposition. It was the administration which demanded a treaty with Great Britain. This aggravated the party in sympathy with France, for they recognized the final prohibition of any closer alliance with that nation. The violence found in the "love-frenzy" for the French people and the intemperate language of the Democratic press was assisted by men high in office in the government. The report of Thomas Jefferson, Secretary of State, is a point in evidence. When popular resentment had become excited, Jefferson made a report on the privileges and restrictions of the commerce of the United States in foreign countries. In this pamphlet American relations with Great Britain appeared very unfavorable. The report was biased, "the fallacies and falsehoods * * * are sufficient proof that the avowed tendency of the whole report is to recommend a closer connection with France, and to inculcate the expediency of a direct commercial hostility with Great Britain."[20] Madison in his resolution before the House of Representatives showed the same hostile spirit. It is therefore quite plain that this long standing desire for a treaty did not come from the people.

There was no reply to the courtesy of sending ministers to England until 1791, when that government was represented by Mr. Hammond. Therefore there must have been other reasons besides the desires for a treaty which induced Great Britain to accept the opportunity for negotiations. The instructions[21] to Jay furnish the additional reasons.

There are two great sets of questions which produced this international contract. First, those questions arising from the war in Europe under which the vexations and

[20] Corbett, "Porcupine Works," Vol. II, p. 526.
[21] See Appendix A (1).

spoliations of our commerce may be placed; second, the infractions of the Treaty of Peace in 1783.

Probably no special envoy would have been considered for a commercial convention, but the differences of the two countries upon the water made a special mission to Great Britain possible.[22] The declaration of war by France on February 1, 1793, against England and Holland seriously endangered the prosperity of the United States. A large part of our trade went to France and French colonies, but England patrolled the ocean, boarded our vessels and seized French goods at will. By such conduct Britain injured the commerce of France and prevented other powers from assisting her. This wholesale search of American vessels was instigated by the Orders of Council commanding British ships to stop all vessels bound for France and take any articles listed for that country. Its effect upon our commerce was as disastrous as the rigid enforcement of the rule of 1756 in regard to the West India trade. This rule forbade a country to carry on in time of war a trade which was interdicted to it in time of peace. After a few years of application it was relaxed, but always in regard to our trade with the British West Indies it was strictly enforced.

Another cause of the treaty was the impressment of American seamen and their retention in service contrary to their wishes. Great Britain had instituted these measures in an endeavor "to deprive us as far as possible of an active commerce in our own bottoms,"[23] since she had grown apprehensive of the large and increasing carrying power of the United States. America was properly incensed and Congress waxed warm in debates over retaliatory duties, preparations for war and the levying of embargoes.

But Great Britain enjoyed an immense harvest from her loose relations with America, and this was recognized by all the statesmen who attempted negotiations.[24] Her situation

[22] State Papers, Foreign Relations, Vol. I, p. 711.
[23] Hamilton, "The Federalist," Paper XI.
[24] State Papers, Foreign Relations, Vol. I, p. 712.

enabled her to abuse our commerce in another way, through her declaration that provisions were contraband of war. Since 1650 military and naval stores had been so recognized in international law, but provisions had been left undecided. Great Britain wished to establish the principle that provisions were to be so considered unless especially provided for by contracting parties,[25] and her legislation was directed to that end. Jay's treaty came at that unfortunate period when Great Britain wished to establish the contraband character of provisions. That nation was therefore extremely hard upon our trade, but showed a proper consideration for that of other countries.[26]

But there were interests on the American continent which also gave rise to the treaty. The New England fishing interests spoke loudly for war as a remedy against the British invasion of their waters. This complaint was echoed among the ship owners.

Then there were the violations of the treaty of peace. Matters which had run over and demanded settlement were: First, the debts which were owed by Americans to British creditors at the time of the Revolution, arising principally from confiscated estates. The decisions of the American courts in regard to these debts can not be impeached. They were not paid at the time because the demands were large and the distress for money was extreme. Every available amount of money was put into an extensive foreign commerce. Furthermore, a cloud of war overshadowed the country. Second, compensation for the slaves carried away upon the evacuation of this country by the British troops after the war. Third, the retention of the British forts[27] in the northern and northwestern parts of the United States. These British garrisons were a menace to the settlement of

[25] British treaties which illustrate this principle are with France, 1667, 1668; Spain, 1713; Denmark, 1782; Russia, 1804.

[26] Orders so effecting our commerce were issued upon November 6, 1793; January 8 and 25, March 18, and August 18, 1794.

[27] *Vide* Appendix E and Map. *Cf.* p. 4.

the country around them[28] and to the navigation of the St. Lawrence River and the Great Lakes. In addition to this, President Washington made strong protests to the British King against the purposing of these garrisons to incite the barbarous Indians of the frontiers to massacre the settlers.[29]

The treaty of 1783 is of interest in this connection only in so far as its violations gave rise to Jay's treaty of 1794. These violations have been cited above, yet it would be ignoring an important part of the negotiations, leading up to and including those on the Jay treaty, if no mention was made of the infraction of our first international compact.

The question as to which country made the first violation of the treaty of peace came up when the attempt was made on the part of the British to obtain compensation for the sequestration of debts and on the part of the Americans for the exportation of negroes. A long and complete discussion followed between Mr. Hammond and Mr. Jefferson. This is one of the finest dissertations on the principles of international law and relations which have ever been given in the history of foreign affairs.[30] At the end of the discussion Mr. Hammond found himself greatly outclassed. The argument is of far too great length and of too much detail to be given here. Only a brief summary can be allowed. Jefferson maintained that the first violation consisted in the

[28] Captain Williamson commenced a settlement near Great Soders, N. Y., when he was visited on August 16, 1795, by Governor Simcoe, who left this declaration in behalf of the British Government: "I am commanded to declare that during the inexecution of the treaty of peace between Great Britain and the United States, and until the existing differences respecting it shall be mutually and finally adjusted, the taking possession of any part of the Indian territory, either for the purpose of war or sovereignty, is held to be a direct violence of His Majesty's rights, as they unquestionably existed before the treaty, and has an immediate tendency to interrupt, and in its progress to destroy, that good understanding which has hitherto existed between His Britannic Majesty and the United States of America. I therefore require you to desist from any such aggression." Grenville Correspondence, Vol. III, p. 530.

[29] Complaint was made of Governor Simcoe and Lord Dorchester. State Papers, Foreign Relations, Vol. I.

[30] State Papers, Foreign Relations, Vol. I.

embarking of the negroes and the retention of the military posts. Hammond argued that the first violation came in regard to the fraudulent procedure against British creditors.

The solution of the whole matter lay in the fact that there had been violations of the treaty upon both sides. The question as to the priority of the exportation of the negroes or of the confiscation of British debts is one of extreme difficulty and with which this essay has no concern. However, the government of America, at that time, was under the Articles of Confederation, the weakness of which was perfectly understood by Great Britain. That the Confederate Government did all in its power to comply with the treaty can not be doubted. But there were no courts to interpret that contract and no executive to enforce it. All the central government could do was to recommend, which it did beyond all blame. On the other hand, the British government was fully capable of carrying out its part of the contract, but refrained, perhaps justly, until the Confederate Government would carry out its stipulations. As soon as a government was formed in America capable of executing a treaty, the treaty of 1794 resulted.

The final cause of this treaty is not found in any violation of contract. It was a protest by a part of the people against a closer alliance with France. It can only be explained by the conflict in policy of two political parties.

Putting aside those who held extreme views, there were two clearly defined parties in the government. One recognized the commercial dependency of the United States upon Great Britain, felt a racial sympathy with the people of that nation and an admiration for the forms of the British constitution. They were indifferent to the progress of the French Revolution and cast indignant glances upon the blasè insolence of the French government. The party held a firm faith that the American people, when recovered from the bitterness of the revolution, would endorse a more affec-

tionate union with the English people than could be maintained with France. Their policy was for a close alliance with England and to deal with the French government in the strictest and narrowest interpretations of the treaty obligations.

The other party sympathized earnestly and naturally with the French Republic. Trescot vividly describes their attitude: They saw all the horrors of a terrible revolution, but saw them only as the unavoidable convulsions of a dying despotism, so pitied and palliated what they could not justify. They regard the conduct of Great Britain as an insolent manifestation of superior force, intended to mortify national pride and injure national interests, and they would gladly have severed all commercial connection with the English people. So strong was this party that Mr. Pinckney writes: "Not only the King but most of his courtiers, and (except the Pole) all the foreign ministers, seem to consider the Americans as united in principle with the French."[31]

The administration had attempted to follow a course between these two interests. That policy now threatened great commercial detriment, as did a closer alliance with France. The administration, holding for the British party and for the accomplishment of all that party stood for, desired the treaty. Jay's mission was the first step toward the execution of its policy. If it succeeded the French sympathizers knew there would be no closer alliance with the allies of the revolution. It succeeded.

Out of all the causes which occasioned the treaty each may be placed under one of the following heads: The long-standing desire and the legislative measures projective of a commercial treaty; commercial interests arising from the European war; infractions of the treaty of 1783; and national political relations.

2. If the negotiations should succeed in settling the differences which caused the treaty, the avoidance of war

[31] Pinckney's Letter Book, Vol. I, p. 74.

and the attainment of certain commercial privileges would result. But the administrators of the American government realized that the mission could not accomplish all that the instructions to Jay demanded,[32] and in the discussion concerning the making of the treaty the most attention will be paid to the projects which failed, leaving the terms of agreement for a discussion under the treaty, article by article.

The atmosphere in which the negotiations were carried on was influenced by French jealousies, by the wounded pride of Great Britain at American independence, and by the neglect of American wrongs under the rejoicing and excitement of victories over the French, particularly to the contemporary defeat of the French fleet by Lord Howe. But the sincerity and candor of the two negotiators led to a degree of mutual confidence which greatly facilitated their labors. A more intimate acquaintance of the negotiators was permitted by the long delay in negotiations owing to a change in the ministry of England and on account of the foreign war. Until negotiations were finished it was agreed that affairs should remain in *statu quo*.

By the last of July, 1794, such a complete understanding of the wishes of the two countries had been reached in personal meetings that written communications were exchanged.[33] Jay's first communication was relative to the captures and condemnations of American vessels. Grenville's reply upon August 1st insured justice, which if not provided for in the courts should be obtained by governmental regulations.[34] With regard to all differences Jay was constantly supplied with evidence and suggestive information by Secretary of State Randolph.

Matters progressed smoothly until a dispute arose as to the first breaking of the treaty of 1783. The discussion for the most part was carried on verbally and only the result is

[32] *Vide* Appendix A.
[33] These are given in full in State Papers, Foreign Relations, Vol. I.
[34] Article VII of the treaty.

given by Jay, "on that point we could reach no agreement." Randolph wrote back immediately, stating such a question should not be passed without some decision, but Jay replied it was impossible to come to any agreement whatever.

The infraction of the treaty naturally involved the demands of compensation for the slaves which were taken from the American owners. On this question we have the same brief report of a lack of agreement. Jay was severely criticized upon this point as allowing his personal prejudice against slavery to weaken his ardor in demanding compensation in behalf of slavery interests. This interest particularly affected the south, and their loss, which was very heavy,[35] accounts for the bitter antagonism toward Jay and the treaty.[36] The principle upon which they demanded compensation is perfectly clear.

During the war of the Revolution many slaves took advantage of the opportunity to escape from their masters and enter the British lines. By the rules of international law in times of war, they became British property. But Great Britain, by an act of Parliament, had previously abolished all slavery, so these fugitives became free. So far as American ownership was concerned, they were British property, subject to British rule, and the military officials decided upon the exportation of these negroes in the vessels carrying away the British troops after the war.

For this purpose a large number of certificates were printed, stamped by the United States Government and issued to those slaves allowed to go free. When the time came for the evacuation of the towns along the coast. these certificates were plentifully distributed by the British officials among all the slaves desiring to embark and who were not included under the legal captures of an enemy. When the United States officials inspected the ships they found every slave provided with a legal certificate, and though he

[35] *Vide* pp. 68-69.
[36] *Vide* Appendix C (3).

might have been their personal property, lately escaped, they were powerless.

When an attempt was made to recover from the illegal action of the military officers, Great Britain maintained that the slaves embarked were provided with certificates, a fact to which the United States government officials could testify. Therefore any objection to the exportation of slaves was unjustified.

In support of this declaration they used the argument that the treaty was "an engagement not to cause any destruction, nor to carry away any property of the American inhabitants, * * * that no alteration in the actual state of property was operated or intended by that article; that every slave, like every horse, which escaped or strayed from within the American lines, and came into the possession of the British army, became by the laws and rights of war *British* property; and therefore ceased to be *American* property, the exportation thereof was not inhibited by the stipulation in question." The British government was perfectly right in one particular, but this argument does not apply to all the slaves in question. Jay states: We could not agree concerning the negroes. Was that reason to forfeit the treaty?

There were two other causes of the treaty which were lost in the process of negotiations. The impressment of American seamen was stated by Grenville to be contrary to the desire of the King. The complaint was to be looked after. Upon anything further it was impossible for the two countries to agree, and the matter was dropped. Likewise, regarding the Orders of Council, that provisions for French ports should be contraband, no agreement could be reached, but an indemnity for past spoliations was provided for under the seventh article.

Upon the refusal of Great Britain to satisfy the demands of the American government in the above respects, the equal footing which had been maintained between the two gov-

ernments was lost. At this point the spirit and word of Jay's instructions seem to have been forgotten. This can be entirely accounted for as a result of a treaty between a powerful nation and one seeking favor.

On August 30, 1794, Grenville transmitted to Jay two projects for a treaty. The first regulated various points in dispute and contained eleven articles. The second established commercial regulations in seven articles. Jay returned the projects on September 5 with marginal notes and additions. The greatest point of dispute at this time was Jay's demand for a compensation arising from the retention of the forts in the north. Grenville acknowledged that compensation was due for this violation of the treaty of 1783, but maintained that the privilege of trading with the West Indies provided for any claims of that character. The matter was settled by this argument. From a discussion of Grenville's projects and further agreements, Jay prepared a compact which with a few alterations became the document finally signed on the morning of November 19, 1794.

During the negotiation there was but one letter from Jay which threw any considerable light upon the proceedings of the negotiations. Correspondence had been limited because of lack of time, the great distance which was not so easily overcome in those days, and the dangers arising from the capture of important letters. The letter which gave the government in America the first hint as to the trend of affairs was very unsatisfactory. It was immediately answered by Randolph, and the only letter of complaint which might have urged Jay to a more uncompromising policy left America on the 12th of November, much too late to have any influence in the making of the treaty. Randolph's two main objections were that a twelve years' treaty with Europe and a two years' treaty with the West Indies would probably be very unsatisfactory to the people. Furthermore, the commercial project of Grenville did not secure the particular privileges and exemptions which this country

enjoyed by proclamation, compared with other foreign nations.

Pinckney and Jay believed all had been attained which Great Britain would submit to, and this decision is undoubtedly true. Whatever weaknesses are found in the treaty which grew out of these negotiations must be attributed either to the fact that a weak power always treats under disadvantages, or to the over ardent desire of the negotiator for peace, friendship, and good will with Great Britain.

While these negotiations were going on, the British people, absorbed in their continental war, paid little attention to its advancement. In America definite information was demanded to relieve the excitement of the people. Congress prolonged its session, waiting for information or results. Results came—the treaty itself.

3. Jay's instructions were divided upon three great principles, and the treaty in its final form can be properly divided into articles relating to these divisions.

The first ten articles are permanent and relate to conditions which were contrary to the stipulations of the treaty of 1783. The remaining articles, excepting the twelfth, are limited in their duration to twelve years, and are divided into those which relate to the commercial difficulties—Articles X to XXV, and those relating to citizens and subjects of the respective countries. The whole treaty consisted of twenty-eight articles, and with the exception of a very few, each was subjected to criticism and opposition on the one hand and argument and support upon the other.

Article I as a peace stipulation was objected to by the French and their sympathizers. The title "Treaty of Amity" was severely criticized in the light of wrongs of which the United States had been the subject.[37]

Article II. The British were required to evacuate their forts[38] by the 1st of June, 1796, and unless the settlers de-

[37] For a synopsis of the treaty and subsequent articles relative thereto, *Vide* Appendix B.

[38] Appendix E.

clared special allegiance to Great Britain, they became citizens of the United States.

The objection to this article was: It provided no indemnity for losses caused by the retention of the forts, but established British colonies upon the weak frontier. The evacuation of the posts was considered entirely too late, and in return for British depredations upon American commerce, this government invited them to an equal participation in the interior traffic of the United States. The evacuation of the posts, it is true, was set at a late date, but the purpose of a late evacuation was to insure against violations of the treaty of 1794 such as had been committed against the treaty of peace.

Some of the posts were very important not only as harbors on the lakes but as trading centers for the inland country. Detroit was the largest of these and had a population of about three thousand souls.[39]

Article III allows the subjects of Great Britain, the citizens of the United States, and the Indians of the territories to pass freely from one country to the other. Vessels belonging to the United States are not to be admitted into the ports of His Majesty's said territories, nor British vessels into rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. There shall be a regular exchange of goods between inhabitants of both countries.

Jay considered this one of the most important articles in the treaty.[40] The advantages were not reciprocal, although very often so considered. The advantages the United States expected were an influence over the Indians and a participation in the fur trade. The first was impeded by the presence of a British population at the military posts and the second was defeated by a monopoly of the fur trade because of the superiority of British capital and the low duties paid on goods imported for that trade into Canada.

[39] Grenville Correspondence, Vol. II, p. 611.

[40] Letters of November 21, 1794. State Papers, Foreign Relations, Vol. I.

Article IV and V stipulated for boundary lines in the northwest and northeast, but any boundary lines were objected to, otherwise than the sea.

Article VI was highly objectionable. It provided for the payment of debts due the British creditors before the peace of 1783, and was considered to be paying a debt which was never contracted. There was no limit on the amount due, and so was open to every chance of fraud. If there were any debts, said the opposition, they should be remedied by judicial procedure or a compromise between the parties. These objections were not without foundation and several years passed before an explanatory article brought the dispute to a conclusion.[41] But Jay informed Randolph that this article was a *sine qua non*.[42]

Article VII, providing for American claims, was objected to as not being complete and sufficient, although the results thoroughly discredit such a criticism. It must have been a delicate matter to obtain such a concession from Great Britain, as it practically amounted to an admission that the Orders of Council were in violation of neutrality. The words "irregular" and "illegal" were skillfully adopted to avoid any unnecessary wounds upon British pride. Subsequent events prove this one of the most important if not the most important article in the treaty of 1794.

Article VIII provides for the commissions under the sixth and seven articles, and is one of the few against which there was no direct objection.

Article IX. It is agreed that British subjects holding lands in the United States and Americans holding lands in Great Britain shall continue to possess the same and all rights relating thereto; that neither subjects or citizens shall be regarded as aliens.

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[41] *Vide* p. 57.

[42] Letter of November 19, 1794. State Papers, Foreign Relations, Vol. I. *Vide* Appendix A (3).

The article was passed uncensured with the exception of some newspaper abuse.

Article X stipulates that there shall be no confiscation of debts in case of war between the parties. This was objected to on the one hand, because the right of confiscation may contribute to preserve the peace of the country and protect the rights and property of the citizens. On the other hand, it was declared to be an article of extreme complexity, resembling reciprocity, but in reality containing no reciprocity at all. Great Britain gained all the advantage in that she had larger funds and private interests in the United States than Americans had in England. However that may be, the clause was obviously just, and was, in addition, a novelty in international diplomacy and a distinct advancement in civilization. Notwithstanding the advantage England may have received at the time, the principle here established saved millions for the United States in the war of 1812, when that government was on the creditor list and England upon the debtor.

This closes the division of permanent articles, from which more was gained than from the temporary stipulations. This is accounted for by the precedents of the treaty of 1783, upon which the American negotiator could base such claims as the evacuation of the forts, compensation for spoliation of navigation, and the settlement of the boundary line. But in the commercial treaty it was more a matter of what one nation was willing to give and the other to receive. There had been no precedent established by a commercial treaty before this date.

According to many economic notions of the day, England had little to gain and much to lose by a commercial compact with America. This part of the treaty was limited in duration because of the rapid growth of our commercial interests.[43] Jay wrote to Washington that "the commercial part of the treaty was of short duration as things more auspicious to negotiate upon will probably arise."

[43] *Vide* Part III, Section 3.

Although the permanent part of the treaty had been subject to severe criticism, it was the commercial articles which excited most hostility.

Article XI guaranteed perfect liberty of navigation and commerce among people of both countries under the following articles. This was subject to no further criticism than that it led up to the rest of the treaty.

Article XII, which was to last for two years, pretended to regulate trade between the United States and the West Indies. From first to last, this article met with criticism and opposition. The Senate refused to ratify it, and the subject of the article was left over for future negotiations. As unsatisfactory as the article may have appeared to Jay, his instructions precluded him from making any commercial treaty which did not include the West India trade. If no commercial treaty had been negotiated, then the advantages of the European and East India trade would have been lost.

The British West India trade had been a source of wealth and power to the colonies. For that reason the Marquis of Buckingham suggested to Lord Grenville that the West India trade should be made a compensation for the retention of the posts.[44] The Revolution and English legislation had deprived the colonies of its benefits, and they were anxious to accept the first opportunity to regain it. Because of the well known exclusive terms of England's colonial policy, President Washington was sensible of the difficulties which would confront Jay. He therefore instructed Jay to ask for trade in vessels of certain definite burdens. The limit of seventy tons was then imposed upon ships trading with the islands, and such a limitation was criticized by James Madison as a trade "in canoes." Jay's idea of the article was: "It breaks the ice—that is, it breaks in upon the navigation act." The limitations upon tonnage and ports of trade seemed to the Senate to be an encroachment by Great Britain upon the regulation of American commerce.

[44] Grenville Correspondence, Vol. II, p. 611.

Article XIII provides for the trade with the British territories of the East Indies. This article was said to be worth the whole treaty, but in reality, as American merchants missed all coast trade and had to come directly to America with their cargoes, the benefits were decidedly limited. Reëxportation was required before full benefit could be derived, thus hampering our conditions more than they were at first. However, it was a great innovation in England's navigation laws and one she refused in subsequent negotiations.[45]

Articles XIV and XV guarantee reciprocal commerce and navigation between the United States and Great Britain. There was no objection to these otherwise than the including of "the most favored nation" clause, which the French party took as a violation of their treaty with the United States.[46]

Article XVI relates to the appointment of consuls for the protection of trade. No objection.

Article XVII allows the seizure and detention of a vessel with enemies' goods. Only such goods could be taken and the vessel allowed to proceed. This was another point at which the French sympathizers took particular offense. The United States' trade was particularly strong with France, and it was objected that this article legalized the right of search, which was working such ruin to American commercial interests. "The treaty so sanctioned a new and inadmissible rule of public law."

Article XVIII enumerates the articles which are contraband of war, and declares that, when provisions are so considered, the owner shall be made speedy indemnification. The French party again put in strong objections, especially on the stipulations that provisions may be declared contraband. At this time the principle that provisions could be treated as contraband of war was uniformly denied by the

[45] *Vide* pp. 65-67.
[46] *Vide* Part III, Section 4.

American government. It was denied by Jefferson in his letters[47] to Pinckney, and opposed by President Washington.[48] It was objected to on the part of the merchants as including more goods in the contraband list than precedent had established. The reason for this obnoxious article is found in the unfortunate time in which the treaty was negotiated. Great Britain was involved in a war with France and naturally would not admit principles which would impeach the propriety of her conduct in seizing provisions bound for that country. Jay's only remedy for it was that a previous article, Article VII, had secured compensation for seizures, and this precedent might be continued.

Article XIX provides for the security of respective subjects and citizens from privateers and men-of-war. No objections.

Article XX relates to the destruction of pirates. There was no objection stated.

Article XXI stipulates that the subjects and citizens of the two nations should commit no acts of hostility against each other and should accept no commissions from foreign states or princes to commit hostilities. This was objected to by the American sympathizers with the French Republic. It prohibited them from assisting that nation in its war with Great Britain. The justice in the article appeared only when it was ascertained that such a stipulation was contained in our treaty with Holland.

Article XXII prohibited either party from authorizing an act of reprisal against the other on complaint of damages until a statement of proof had been presented to the party supposed to commit the injury. This article was opposed by all the enemies of England who were favorable to the policy of sequestration and confiscation.

Article XXIII relates to the treatment of ships, officers, and crews in the ports of the contracting powers.

[47] Wait, State Papers, Vol. I, pp. 218, 324, 372, 408.
[48] Marshall's "Life of Washington," Vol. V, p. 619.

Article XXIV provides that the privateers of nations at enmity with Great Britain and the United States shall not arm their vessels in the ports of one for hostile purposes against the other, or sell what they have captured from one nation in the ports of the other.

Article XXV makes it lawful for privateers or ships of war to take such vessels as they have captured into the ports of either party and be there subject to certain rights and privileges. No merchant vessel was to be taken within cannon shot of the coast or full satisfaction was guaranteed.

Concerning the last three articles there were many objections bearing upon the too friendly relations into which they led the United States with Great Britain and upon the facilitation of privateering. This, in the absence of a navy, was argued to be our only defence against Great Britain. After it was shown that these provisos were copies of similar articles in the French compact, the objections were continued only by the radicals of the French party.

Article XXVI. In times of war merchants and citizens of one country are permitted to reside in the territory of the other and continue their trade. No objections.

Article XXVII provides for the return of all persons fleeing from justice to either country. A great cry was set up against this article as "a cruel stab at the sovereignty of the people" by those fugitives from England and Ireland who, like the colonists in Australia, were outlaws for petty offences, such as poaching, as well as for more serious crimes. This article applied more particularly to murderers and forgers.

Article XXVIII. The last article provides that the first ten shall be permanent, and the remaining articles, the twelfth excepted, should be limited to twelve years. No objections. This last article was agreed upon as an attempt to overcome the weaknesses of the treaty. Jay wrote to Washington[49] that when the treaty had been in effect some

[49] September 3, 1795, State Papers, Foreign Relations, Vol. I. *Cf.* Jay's "Correspondence and Public Papers of John Jay," Vol. II.

time defects would appear and further arrangements would be necessary. This article would make allowances for the settlement of questions on impressment and the contraband character of various goods.

In order to form a just estimate of the treaty with Great Britain, the political state of Europe and America must be kept in mind.[50] Any treaty with England, it was obvious, could be negotiated only at a great disadvantage, but it was unquestionably worth the trial.

In general, those complaints which were directed against the treaty were most bitter upon what the treaty did not contain rather than on the articles it did.

The stipulations it did not contain were those upon which the negotiators could not agree, and have been previously discussed.[51] The omission of an article forbidding impressment brought down the opposition of the merchant class. The lack of a compensation for negroes raised a strong party unfavorable to the treaty in the south. The jealous stipulations for West India trade were opposed by the commercial class and finally left unratified. The recognition of a right of search was also a point against the interests of the above parties. But the rights of search and the impressment of American seamen were not questions of diplomacy; their answer was found in the War of 1812. The War of 1812 failed to eliminate impressment entirely. Mr. Webster's emphatic letter to Lord Ashburton alone removed that disturbing element. It was not until October, 1830, that the gates of the British West India trade were opened to American vessels.

The main weaknesses were summed up by the party in opposition in Congress. The treaty, as a whole, did not prohibit interference in our international relations, but fixed a foundation for further British influence. It restricted some of the most important rights of international

[50] *Vide* Introduction.
[51] *Ante* Part II, Section 2.

sovereignty and hazarded the neutrality of the United States. The whole treaty was unequal and unjust in relation to the spirit of the treaty of 1783.

Popularly, it was argued that Jay was a timid negotiator, and his unfriendly feeling for France and sympathy for Great Britain had led him into a betrayal of his country's interests.

A defence of the treaty upon principle would undoubtedly be very weak, whatever might be said upon the score of policy. The dictatorial attitude of England is quite apparent and the commercial interests are decidedly in favor of that nation. Lyman states that "as a mere trial of diplomatic skill this treaty is a confessed failure, for with a solitary exception, the tardy evacuation of the posts, its ratification abandoned every position which the government had assumed in preliminary discussions and its formal diplomatic instructions." But this criticism will be found to overreach a true estimation of conditions. Jay was compelled to accept or reject whatever the British negotiator had to offer, and there is very probably nothing in the regulation of the national interests which will excite any pride in the American people. However, there was no small amount of diplomacy. The first success came in obtaining any recognition whatever from Great Britain. The second step was not so much concerned with reciprocal relations—offering valuable concessions for valuable concessions—for the United States had nothing of such vital importance to offer Great Britain but what that country was able to take for herself. The diplomacy lay in drawing from England the greatest concessions which she would possibly admit. Mr. Pinckney, the minister to England during this period of negotiation, may be considered as a very competent judge of the result. "As little has been conceded by Mr. Jay and as much obtained by the United States as, all the circumstances considered, could be expected."[52] It was never

[52] Correspondence on the Treaty, American State Papers, Foreign Relations, Vol. I.

maintained by the most ardent supporters of the treaty that it was without faults, but rather that these weaknesses were due to the inequality in the commercial power of the two nations. Jay's judgment is judicially characteristic and very fair in this regard. "My opinion of the treaty is apparent from my having signed it. I have no reason to believe or conjecture that one more favorable to us is obtainable.[53] He also recognized that many questions were yet unsettled. "Perhaps it is not so much to be regretted that all our differences are merged in this treaty without having been decided." Possession is proverbially nine points of the law, and what England surrendered was virtually her own even to the possession of the military posts. The American flag waved over the ocean by her suffrance alone. In later years its right to wave there could be and was amply proved.

A modern criticism holds that Jay's treaty is "as great an American diplomatic victory as was the wringing from the Dutch Republic the recognition of American independence."[54] Certainly no treaty ever negotiated by America has been so heartily condemned or has obtained more benefits in comparison with its unpopularity. The benefits will be more thoroughly discussed later. A summary will, however, be proper here. The treaty prevented an inopportune war; obviated the necessity of a closer allegiance with France; fixed neutrality as a settled policy in a contest which was to involve every nation in Europe; time was allowed for the American union to become more strong and the government to run smoothly; over two million dollars were granted to American merchants who had suffered during hostilities, and Great Britain here acknowledged the injustice of her proceedings and waived the attempt to inject the rule of 1756 into international law; the military posts were given up at the appointed time, which was more than the treaty of 1783 could secure; and for the first time in

[53] American State Papers, Foreign Relations, Vol. I, November 19, 1794. *Vide* Appendix A (3).

[54] Annual Report of the American Historical Association, 1898.

American history a provision was made for the extradition of criminals. A comparison with later negotiations showed that many stipulations of this "execrable" treaty of 1794 were adopted in later compacts.

But in addition to all these benefits, there is a niggardly justification of the treaty in the fact that it was an alternative for war. There was a haughty indifference on the part of Great Britain to the unsettled problems which vexed the United States. There was a desire to injure American interests, to neglect American remonstrances, and provoke delays for settlement which raised popular feeling so strongly against Great Britain that it insured hostilities. In the face of French sympathies, such feeling could not long be suppressed. Contemporary statesmen say that the United States, in case of war, could barely have sustained honor and existence.[55] At least, war would have injured American commerce, excited strong sectional discontent, checked the spirit of commercial and maritime enterprise and strengthened rather than removed the cause of ill-feeling between the two nations.

As a matter of fact, the treaty worked more good in practice than was believed possible even by its advocates. Washington debated its ratification long and seriously, but later declared: "The treaty has secured everything desirable in respect to our foreign relations, toward confirming their prosperity."[56]

4. A discussion of the treaty has been given at this point that there might be a better understanding of the problems which were presented at the time of its ratification.

The contract resulting from Jay's mission was handed to the Secretary of State, Edmond Randolph, upon the 7th of March, 1795, and was transmitted to the Senate in special session on June 8 of the same year. Its ratification was advised by that body upon June 24. Nothing concerning

[55] Lyman, "Diplomacy of the United States," p. 127.

[56] Farewell address, September 17, 1796. Richardson, "A Compilation of the Messages and Papers of the Presidents," Vol. I.

the treaty was definitely known until its publication in the *American Daily Advertiser* on July 2. But various conjectures were made, and these untrue conjectures were really the cause of much poorly reasoned and premature opposition.

James Madison was in a position to learn as much of the treaty as easily as any one. On November 30, 1794, he writes: "All that is given out from Jay's negotiations is in favor of some advantageous results."[57] It was not until March 22, 1795, that he was able to write with any assurance upon the contents of the treaty. From that date, letters and early criticism spread a general and, for the most part, an unfavorable knowledge of the treaty. Accordingly, when it came before the Senate for discussion every influence was brought to bear upon that seclusive body.

The Senate met and immediately passed a motion that all work upon the treaty should be done behind closed doors. Therefore, no record is left of the proceedings of the Senate upon this document. This policy provoked no small amount of criticism, and every effort was made by the party in opposition to induce or intimidate the Senate into public debates. One of the contemporary republican writers states: "The conduct of the Senate respecting the treaty is truly extraordinary. Upon what constitutionality or republican principle they can justify secrecy, in relation to a law, which shall rival the darkness of a conclave or a seraglio, is extremely difficult to conceive." All this was for the very apparent purpose of publishing the inflammatory speeches of the opposition.

During the process of debate, Burr of Virginia proposed that all considerations of the treaty be postponed; other Senators proposed that a part should be accepted, a part revised, and the rest of it expunged; still others moved that

[57] Writings of James Madison, Vol. II, Letters to Thomas Jefferson.

the President be advised to negotiate further. Senator Tazewell finally moved that the treaty "be not signed." The motion was voted down, and the Senate by a strict party vote recommended the President to attach his signature. The vote as it finally stood was an exact two-thirds majority, which is necessary for a constitutional ratification of a treaty. The vote stood twenty yeas and ten nays. The ratification was conditional. It suspended that part of the twelfth article[58] which related to West India trade, the principal objection being that it prohibited the exportation of certain products—sugar, molasses, cocoa, coffee, and cotton. In its place the Senate suggested another article.

The discussion of the treaty in the Senate was probably very thorough. Thirty-three copies of the treaty were printed under an oath of secrecy and these distributed among the Senators for individual study. The Senate was not satisfied with the document under debate. In the formal notice to the President, recommending his signature, it was added: "And the Senate recommend to the President to proceed without delay to further friendly negotiations with His Majesty on the subject of said trade, and of the terms and conditions in question."

This peculiar ratification of the Senate placed the President in an unprecedented position. In the provisional order of that body, he was asked to ratify an article which had never been laid before the Senate, and in all events he was advised to ratify a treaty not agreed upon by the English negotiator. The President believed that the proceedings of the Senate fell clearly within the meaning of the Constitution,[59] and after favorable advice from his Cabinet and a

[58] By the suspension of this article and the ratification by the British Parliament with this amendment, a precedent was established of ratifying treaties with the exception of one or more articles. When Monroe and Pinckney were negotiating in London on June 3, 1804, Lord Hawkesbury censured the practice of ratifying parts of a treaty as "new, unauthorized, and not to be sanctioned." The treaty of 1794 was brought up as a precedent. State Papers, Foreign Relations, Vol. III, p. 93. *Cf.* "Porcupine Works," Vol. II, p. 271.

[59] Article II, Section 2, paragraph 2.

"full and mature deliberation," he attached his signature. He hesitated in his action but once, when it was reported that the British Council had given orders to seize all provision ships. The report was unofficial and false.

The treaty was subjected to a long debate in the cabinet, with the result that, excepting one member,[60] all concurred in its ratification. Through all the tumult which popular discussion of the treaty caused and in spite of the attempts to intimidate the President into rejecting it, Washington remained calm and collected. He gave the treaty deliberate and unbiased consideration, he believed a better one could not at the time be obtained and signed it: "although it does not rise to our wishes, yet it appears to me calculated to procure to the United States such advantages as entitle it to our acceptance."[61]

As Mr. Jay had returned to America and Mr. Pinckney was absent in Madrid upon a special mission, ratifications were exchanged on the 28th of October, 1795, between Lord Grenville and William Allen Deas, the Secretary of the United States Legation. The British government made no objection to the suspension of the twelfth article.

On the 1st of March, 1796, the President communicated to Congress for their information and vote, the necessary appropriation to put it into effect. Upon March 2, Edward Livingston of New York made a motion requesting the President to lay before the House all papers relating to Jay's treaty. The Republicans favored this attitude, and as they were in the majority the motion carried by a vote of sixty-two against thirty-seven after a debate lasting from March 7 to the 24th. The instructions to Jay had been published and were generally known, but Washington, after

[60] Secretary of State Randolph. *Vide* Randolph's "Vindication of Randolph's Resignation." He claimed the British right of search and impressment was conceded by America, and therefore probably revealed enough of the treaty to cause opposition. Lyman, "The Diplomacy of the United States."

[61] A letter of Washington. Reports of the American Historical Association, 1901, Vol. I.

consulting his cabinet, refused[62] to grant the request of the House. The grounds for his refusal were: The dangerous precedent which would be established in that the disclosure of foreign affairs was often impolitic, and that dangerous results might be expected by allowing the House any voice in the powers of treaty making. Such procedure on the part of the House was not provided for in the constitution and was contrary to the purpose of the Constitutional Convention, which had upheld the principle of equal representation in international relations.

The House considered Washington's reply and the right to demand the papers was reaffirmed. By some it was maintained that the House was vested with discretionary powers to carry a treaty into effect or to refuse to do so by failure to vote necessary supplies. By the other party it was claimed that the treaty-making power was vested exclusively in the President and the Senate, that the House must acquiesce in their decision and vote the necessary funds to put the compact into execution.

The debate was not so much upon the treaty-making right of the House as their right to refuse appropriations to carry the treaty into effect. This is shown by the motion passed upon April 7, which declared, first, that the House had no claim as an agent in making treaties, but, second, as a part of Congress it had a right to deliberate on any treaty carrying into effect regulations on subjects given by the constitution to the control of Congress. The other argument was that the Constitution had purposely excluded the House from all participation in the making of treaties. This came from the Federalists, or Strict Constructionists, and many of its members had participated in the Constitutional Convention.

From this point, the debate drifted into the merits and faults of Jay's treaty, and on April 15 the debate centered upon a federalist resolution to put the treaty into effect.

[62] March 30, 1796. State Papers, Foreign Relations, Vol. I, p. 550.

There were two great questions constantly before the House: First, the constitutionality of their discretionary power in voting appropriations for a treaty; second, the question of voting an appropriation to put the treaty into effect. Debates upon these questions occupied the entire attention of Congress.

James Madison was leader of the opposition and spoke very strongly against voting ninety thousand dollars of the people's money, not counting the British debts which were involved, to put a treaty so unfavorable into effect. This same argument has been used in every acquisition of territory by the United States: in the Louisiana treaty of 1803, the Gadsden purchase of 1854, and the Alaskan purchase of 1867. Twenty million dollars have since been paid for a group of islands. Madison also argued that the treasury was empty, and the only resource was borrowing, which was extremely difficult at the time. The commercial disadvantages were dwelt upon, and in fact all the objections which have been previously mentioned were urged in the most emphatic manner possible.

The Connecticut representatives, Mr. Swift and more especially Mr. Hillhouse, made the strongest speeches in favor of voting the necessary appropriation. They dwelt particularly upon the lack of foundation for the results the opposition had predicted in case the treaty was adopted and spoke at length on the unsettled conditions which would exist and the war which would arise if the compact was not adopted.

On April 29 the question of voting the appropriation came before the House as a Committee of the Whole. The vote cast was forty-nine to forty-nine, but the speaker, though opposing, voted for the treaty to give further opportunity to consider it.

This vote on the part of the speaker, Mr. Jonathan Dayton, of New Jersey, is one of tremendous importance. With perfect honor on his part he could have voted against

the treaty, caused a deadlock in Congress, refused the means of executing that contract, put the United States government in a very embarrassing position with Great Britain and wrought disastrous results on the treaty making power of the President and Senate. As it was, the two main influences which promoted the success of the treaty were allowed to operate. By prolonging the discussion in Congress an opportunity was given to allow the mercantile and conservative voice of the country to be heard. Furthermore, the necessary time was given for the reaction which must inevitably follow such an outburst of popular feeling. The second influence declaring for the treaty was the speech of Fisher Ames, the Representative from Massachusetts. Mr. Ames was a member of Congress during the administration of Washington. He was an ardent Federalist and one of the leaders of the House, where he was considered an extemporaneous but finished orator of great persuasive power. This speech was the culmination of his official career. He had been very ill during the entire session of Congress and a few days previous was thought to be on his death-bed. The permission for a further discussion came at a time when he was able to reach the House, and after Mr. Preston had spoken, he staggered from his seat and addressed the chair, saying he hoped his strength would permit him to speak for a few moments. He spoke without premeditation, compelled by his feelings and his knowledge of human motives and political action. His emaciated form and the pallor of death upon his face enlisted unbounded sympathy, and tradition had it for many years that Ames' speech on the British treaty was the most powerful ever delivered in Congress. Be that as it may, the speech in junction with the other factors mentioned secured a majority in favor of the treaty. The perplexing problem which was presented was deferred for a more mature government and wider experience to solve. The result of the conflict had shown a difficulty in the practical working of the Constitution, which still remains unremedied.

The three different ballots taken upon the treaty proved a very close division of opinion. The first was: For a motion declaring the treaty objectionable, forty-eight; against such a declaration, forty-eight, with the vote of the Speaker. The second vote stood: For declaring the treaty objectionable, forty-nine; against such a declaration, forty-nine. The Speaker voted with the negative. Some declared for the treaty because they did not believe it objectionable, others because they feared a contrary declaration was injurious, and still others supported the treaty because to object to it was to object to all compromise. The final ballot came upon a motion by Mr. Hillhouse of Connecticut, to carry the treaty into effect. It was supported by fifty-one members because they believed the treaty a good one, or the best under the circumstances. Forty-eight members opposed the treaty as a bad one. Five members were absent. The treaty was safe. The interests which passed it were: The support of Washington, the insignificance of the sum for the appropriation, and the work of the conservative element. The defeated party was the Democratic party, jealous of the powers of Congress to control the public purse.

The debates in Congress were long and followed out every possible line of argument. Concerning them, Chief Justice Marshall said: "Never had a greater display been made of argument, of eloquence, of passion."[63] Washington notes that "it (the treaty) suspended in a manner all other business" of the House and "agitated the public mind in a higher degree than it has been at any period since the Revolution."

When the House, by so frail a majority, voted to support the treaty, it was taken up in public meetings, discussed in the newspapers, and even condemned or approved in the State Legislatures.

People all over the United States took up the debate either for or against such a relation with Great Britain, and

[63] Annals of Congress, Fourth Congress, first session. Editorial note.

the work of the opposition is a blot upon the fair administration of Washington.

Randolph, as Secretary of State, was one of the few who became acquainted with the treaty upon its arrival in America, and he has been accused of giving out unfavorable articles of the compact to which he was so much opposed. This was done in May, 1795, for the purpose of forming a hostile sentiment. There is evidence supporting such a statement in the fact that the condemnation of the treaty spread much faster than any accurate knowledge of its contents. Opposition really began with the appointment of Jay, which was declared unconstitutional. Legislative measures with a purpose to destroy any fruits which might result from Jay's mission have already been noted.[64]

But the final burst of indignation came after the misconduct of Senator Mason in the publication of the treaty on July 2, 1795. Thomas Jefferson voiced the Republican sentiments when he called the incident "a bold act of duty in one of our Senators."[65] He called the treaty an "execrable," "an infamous act" which was "nothing more than a treaty of alliance between England and the Anglo-men of this country against the legislature and people of the United States." The publication precipitated a storm of abuse. The waves of party feeling ran high, and were agitated still further by demagogues and mob orators. Public meetings denounced the treaty on every side. Copies of it were burned before many of the homes of British officials, north and south. Jay was dragged through the streets in effigy and guillotined.[66] He was pictured as selling for British gold the interests of his country. Language far beyond what is fit for publication was used to characterize his act. In banquets which were in any way concerned with international interests, toasts in the form of puns upon his name

[64] *Supra* Part I, Section 2; Part II, Section 1.
[65] American Historical Reports, 1901, Vol. I, p. 287.
[66] Appendix C.

were strictly in order.[67] The political newspapers of Corbett, Freneau, Fermo, and Bache reveled in malignancy and abuse. Some of the most venomous articles were in the *Aurora,* and written by John Beckley, who signed himself "A Calm Observer." At Boston, in June, 1795, a publication invited all Americans who felt "the spirit of resentment and revenge" to assist in burning a Bermudan privateer.[68] This action was taken at the instigation of the French consul at that port. The vessel, properly called the "Speedwell," was sailing under the name of the "Bettsy of St. Croix" to deceive the privateers of the Bermudas. She was dismantled and burned to the water's edge. The papers later characterized the deed as one which could "hardly be justified."

From Boston messengers riding night and day carried the news to New York. For days the probable downfall of the treaty had been discussed on every street corner. When the news came from Boston, the citizens of New York felt that such action was worthy of all imitation, and soon after stoned Hamilton in his attempt to defend the treaty. The proceedings in Philadelphia have already been suggested. Virginia very strongly declared its intentions of withdrawing from the union.

In Charleston the hangman was chief official in burning the treaty in the public square, while the British flag was dragged through the streets. South Carolina was particularly strong in declaring its "abhorrence and detestation of a treaty which gave the English government more power over us as states than it claimed over us as colonies—a treaty involving in it pusillanimity, stupidity, ingratitude, and treachery." It claimed that the Senators who had advocated the treaty were unworthy any further trust, and

[67] "A perpetual harvest to America; but clipt wings, lame legs, the pip, and an empty crop to all Jays."—*Aurora,* July 7, 1795.

"The Republic of America: May she never mistake Jaybirds for Eagles."—*Courier Française,* July 15, 1795.

[68] *Cf.* McMaster's "History of the United States," Vol. II, p. 217. Also, Hildreth's "History of the United States," Vols. IV, V.

their six-year term was dangerous to American liberty unless the constitution should be amended.

When the treaty was ready for the President's signature, the cry went up: This was the test "whether the *majesty of the people* was like the children's rattle," or a power in absolute and real existence. When the President concurred in the Senate's action, the House of Delegates in Virginia voted down a resolution declaring their undiminished confidence in the President. He was accused of usurping the powers of Congress. From all quarters he had received personal letters with a purpose to influence him against the ratification. These continued to arrive from outside districts until the late spring of 1796. The President's conduct was subject to severe criticism by Franklin[69] in that his nomination of Jay was unconstitutional. But there is nothing in the Constitution to prohibit it. The President was becoming "monarchial" in appointing a man so opposed by the House of Representatives. But such a statement is totally unauthorized by any facts. The nomination of Jay had never been put to a vote in the House.

It is not to be wondered at, that this spirit of opposition found its way into the halls of Congress and caused long and eloquent discussions. With the exception of the Civil War times, never has public opinion, since the founding of the nation, been so decided and demonstrative. Throughout the summer, fall, and winter of 1795 and the spring of 1796, the country was flooded with pamphlets, anonymous letters and circulars. Out of the vast amount of literature which resulted, that of Alexander Hamilton, as "Camillus," is in defense of the treaty and far superior to any other writings for either side upon the subject. The work of Edward Livingston, Secretary of the Treasury, as "Decius," is the best in behalf of the opposition.

Much of the hostility to the treaty had no cause but the riotous agitations of demagogues and their contagious ef-

[69] "Porcupine Works," Vol. II.

fects. The objections of the more serious thinkers can be classed under the supposed wrongs which the treaty would inflict upon the American carrying trade, its disregard of the French treaty, the lack of compensation for negroes, retention of forts, and commercial depredations, and the unjust principles supposed to be involved in its international law stipulations. Most of these reasons have been considered; the rest will be left for separate explanation under the effects of the treaty.

The object of all this violence was to intimidate the President and bring popular feeling to bear in the House against the ratification of the treaty.

The character of the factions which opposed the treaty explains in itself the reason for their hostility. They were composed of those southerners who had not been compensated for their slaves and who were debtors to the British and hoped to escape those debts by their confiscation in war; of the French party, because American dependence on their commerce as well as their political influence had been lessened, also the relations of this government were upon friendly terms with their enemy; of anti-federalists, because they were disarmed of an effective complaint against the government in the retention of the military posts and the spoliations of commerce; of the Jacobin philosophers, and especially those societies in New York whose doctrines were made up of all the schemes which would conflict with the existing governmental policy;[70] of the disorganized politicians who had inbibed the spirit of opposition upon the street corners and mass meetings; of those malcontents of various descriptions who loved spoils of war and who followed their leaders without personal reason or foresight; and lastly of those English and Irish emigrants who had fled from justice in their own country and feared punishment of a serious or petty nature if returned.

Jay knew the treaty would never become popular because of its unsettled interests. He writes: "I knew and

[70] Two of their publications were *The Jacobiniad and The Guillotina.*

know that no attainable settlement or treaty would give universal satisfaction and expect the one I have signed will administer occasion for calumny and detraction. * * * Demagogues will constantly flatter the passions and prejudices of the multitude and will never cease to employ improper arts against those who will not be their instruments.''[71]

Slowly but surely the tide of popular feeling began to turn, not in favor of the treaty, for it bore the indelible stamp of unpopularity. The course of popular feeling turned in favor of Washington, who controlled the nation with that calm dignity, moral independence, conscious rectitude, beautiful consistency and simplicity of purpose which idealizes him in the hearts of his countrymen. It was only the rancor of political parties which libeled this man who had resisted the encroachments of England on a weak and dependent country. Spain had retired before his unflinching purpose and every nation in Europe felt the influence of this career marked with probity and steady devotion to the interests of the United States. Jay found the confidence placed in Washington of use in his negotiations.[72] Madison found the name of the President working ''wonderful success'' in favor of the treaty of America.[73] ''Washington's personal authority more than anything else carried the treaty and averted war with Great Britain.''[74] By his ratification of Jay's work he demonstrated to the world the power of the government which had recently been established. The United States was no longer known abroad as the weak decentralized power existing under the Articles of Confederation, but for the first time it was placed *de jure* where it had been considered *de facto*. Its power as a treaty-making nation was established, and its position con-

[71] Johnston's ''Life and Correspondence of John Jay,'' Vol. IV. Letter to President Washington, February 25, 1795.

[72] *Ibid.*, Letter to Washington, November 19, 1794.

[73] ''Writings of James Madison.'' Letter to Ed. Pendleton, February 7, 1796.

[74] Fiske's ''Essays, Historical and Literary,'' Vol. II, p. 135.

firmed among the family of sovereign nations. The greatest benefit of Washington's administration is that in this political crisis it was wise enough to recognize and firm enough to accept a national necessity. To him and to his assistants it was given to create strength from their weakness, and to develop a noble pride from a wise humility. No Presidential policy could be more simply and truly outlined than in Washington's reply to the letter of the Selectmen of Boston, July 28, 1795, answering their questions regarding the treaty-making power under the Constitution. This letter,[75] coming at the time of great political passion and contention, quieted the factions among the people of the north and reasoned the opposition into support.

Concerning the arguments in the Senate, only conjectures can be drawn. It is quite apparent the debates for the adoption of the treaty were convincing. These two branches of the government were sufficient to declare the

[75] GENTLEMEN: In every act of my administration I have sought the happiness of my fellow citizens. My system for the attainment of this object has uniformly been to overlook all personal, local, and partial considerations; to contemplate the United States as one great whole; to confide that sudden impressions, when erroneous, would yield to candid reflection; and to consult only the substantial and permanent interests of our country. Nor have I departed from this line of conduct on the occasion which has produced the resolutions contained in your letter of the 13th instant.

Without a predilection for my own judgment, I have weighed with attention every argument which has at any time been brought into view; but the Constitution is the guide I never can abandon. It has assigned to the President the power of making treaties, with the advice and consent of the Senate. It was doubtless supposed that these two branches of government would combine without passion, and with the best means of information, those facts and principles upon which the success of our foreign relations depend; that they ought not to substitute for their own connections the opinion of others, or to seek truth through any channel but that of temperate and well formed investigation.

Under this persuasion I have resolved on the manner of executing the duty before me. To the high responsibility attached to it I freely submit; and you, gentlemen, are at liberty to make these sentiments known, as the grounds of my procedure. While I feel the most lively gratitude for the many instances of approbation from my country, I cannot otherwise deserve it than by obeying the dictates of my conscience. With due respect, I am, gentlemen, your obedient,

GEORGE WASHINGTON.

treaty in force. But the lower house of Congress and the people were to be satisfied. The work of Fisher Ames won the necessary support from the former and the unequaled efforts of Alexander Hamilton won conviction from the conservative elements of the people. Regarding the military posts, the commercial and negro questions, he argued better than Jay himself. By sound reasoning in behalf of the treaty and ridicule for the opposition he gained the support of those who might have fallen into the popular channels. Those who endeavored to reply to his essays were soon silenced or found their arguments too weak to gain the needed support. These essays came out under the name "Camillus," and their sole purpose was to reconcile the people to the action of the administration. Hamilton had done all in his power to stem the tide of popular opposition. The success of his work was shown as the summer of 1795 went by. Jefferson spoke of him as "really a colossus to the anti-republican party" and "without numbers, a host within himself."

Many of the states which had previously opposed the treaty so violently now suffered a reaction. In the latter part of the year 1795 most of them had sent resolutions in favor of the treaty to Washington. By March 15, 1796, New Hampshire, Massachusetts, Rhode Island, New York, Pennsylvania, Delaware, Maryland, and North Carolina had declared themselves favorable to its execution. South Carolina believed the treaty to be injurious, Kentucky called it unconstitutional, and Virginia declared for extreme opposition. The party which had been won over entertained the belief which Gouverneur Morris expressed: "That more noise was made about it than was proper, owing to personal causes."[76]

5. On the other hand, no such criticism is applicable to the history of the treaty in Great Britain. The English

[76] "Diary and Letters of Gouverneur Morris." Entry for August 22, 1795.

Parliament was primarily concerned with its war against France and the affairs upon the continent. It gave a small amount of attention to the treaty which Grenville and the American minister were negotiating. It was satisfied with Grenville's meager report, and the treaty itself was allowed to speak as a result of the negotiations.

Opposition to the treaty was very slight. However, the faults of the treaty were readily recognized. Charles Fox, in his speech before the British Parliament, made objections to the same articles which the patriots of this country had made. One objection was that "the article restricting the trade of the United States with the British West Indies to vessels not exceeding seventy tons was equivalent to an act for creating a nursery of seamen for America." Small vessels required, in proportion to their tonnage, an additional force of seamen, averaging between thirty-four and thirty-eight more men for vessels of forty tons than vessels of four hundred tons.[77] The most serious objection which appears was raised in the Irish Parliament by Mr. Gratan: "This very America which the British minister insulted and then crouched to had, by the late Treaty of Commerce, been admitted to all the British settlements in the East and West Indies, to the latter of which Ireland was only conditionally admitted, and from the former unconditionally excluded; yet Ireland was a loyal, attached nation, and America, an alien."[78]

The attitude of the British Parliament is one of self-censure. Mr. Fox, in his report for the Committee on the State of the Nation, says: "With respect to America, * * * after giving orders for taking her goods, we recalled those orders and have since entered into a treaty by which we agree, properly, I believe, justly, and if justly, wisely, to pay for the rashness and folly of issuing them."[79]

[77] Annals of Congress, Fourth Congress, third session, p. 32.

[78] Benton's "Abridgment of the Debates of Congress," Vol. I, p. 718.

[79] Hansard's "Parliamentary Debates," Vol. 31, p. 1368.

Grenville, in regard to the negotiations, states that "he could hardly with propriety speak of a treaty which, though signed, was not yet ratified. When that was done, he undertook for himself and colleagues to show that it was fraught with mutual honor and advantage to both countries, and he declared that he should always consider the conduct of the gentleman who carried on the negotiations on the part of America as highly honorable to them, marked as it was by temper, moderation, and good sense." The Marquis of Lansdown said the treatment of the sister people of America was marked with more than common outrage, especially in regard to their orders upon American commerce, the subtle means they had employed in causing the Algerians to declare against America, and by inciting the Indian tribes against them. "No power on earth could display more true wisdom, more dignified moderation, than had Mr. Washington and the government of America."[80] On July 4, 1797, Parliament passed an act of twenty-seven long articles which put the treaty into effect.

Great Britain returned the compact on the 1st of February, 1796, and in the latter part of that month President Washington issued his proclamation requiring its observance by all persons. Jay wrote to Grenville: "The treaty will go into operation and supported by a majority of the people, a majority comprising the greater part of the men most distinguished by talent, weight, and worth."[81]

III.—RESULTS OF THE TREATY.

By the proclamation of Washington, requiring the observance of the articles in the Treaty of Amity, Commerce, and Navigation, the periods of negotiation and ratification of the treaty proper are finished. Yet there remains a solution to all the problems which were viewed with deep con-

[80] Hansard's "Parliamentary Debates," Vol. 30, p. 1401.

[81] Johnston's "Life and Correspondence of John Jay," Vol. II. Letter dated May 1, 1796.

cern by the opponents of the treaty and optimistically interpreted by its advocates.

1. The period for the evacuation of the forts, which had been so strongly condemned, was sought by Great Britain to insure herself from any breach of the treaty by a government which she did not as yet understand. These ports[82] were evacuated and all arrangements regarding them concluded by December, 1796. Some of them, Detroit and Oswego in particular, became points of more than local interest. Others were used as trading posts and forts from which the conduct and temper of the Indians could be influenced. The rest have crumbled into decay and oblivion.

Before appropriations to put the treaty into effect had been voted by Congress, an article[83] explanatory of the third article of the treaty, and regulating the passage of Indians from one territory to the other, had been concluded, May 4, 1796.

Articles IV and V related to the settlement of the northwestern and northeastern boundary lines. The exact location of both boundaries has been subject to much negotiation. A convention was drawn up in London, May 12, 1803, and attempted to settle the questions. The project was submitted to the Senate upon October 24 of the same year, and it was ratified with the exception of the fifth article. This declared that the boundary line of the northwest should be the shortest line drawn from the source of the Mississippi River to the northwest point of the Lake of the Woods. Ratifications were never exchanged, although this boundary line is taken on all maps of the United States during this uncertain period. The commission under the fourth article accomplished nothing. It was left for the purchase of Louisiana in 1803 and the Webster-Ashburton treaty of 1842 to carry the boundary line to the Rocky Mountains, and to the settlement of 1846 to fix the boundary to the Pacific coast.

[82] Appendix E: Consideration and Map.
[83] Appendix B: Explanatory Articles.

The commission under the fifth article, to determine the northeast boundary line, met at St. Andrews in Passamaquoddy Bay during the early part of October, 1796. The survey was started, but it required more time than had been expected, and they adjourned to meet at Boston in August, 1797. A difficulty was experienced in locating the river St. Croix, as required in the treaty, and in March, 1798, an explanatory article was agreed upon, authorizing the commissions to designate the source of the river in any manner which they saw fit. The survey had not been completed when the time for a meeting had arrived, so they met at Providence, Rhode Island, in June of the following year. Their decision was made on the 25th of October and given to Congress in the address of President Adams.

The report, as given by the commission, was a compromise. Undoubtedly the river intended to be the St. Croix by the peace commissioners of 1783 was the most easterly river, or the Magadavy. This was the testimony of the commissioners Adams, Jay, and Franklin. It is equally certain that the river accepted as the St. Croix was the one so named in the traditions and treaties of two centuries. England succeeded in acquiring several square miles of territory by her usual method of adhering to the letter of the treaty rather than its spirit. The identity of the St. Croix was fixed and its source and mouth determined. Here the commissioners' work was ended, leaving two sections of disputed boundary at both ends of the river.

A question soon arose as to what part of the country was intended by "the highlands," and upon this hinged the boundary line as far as the headwaters of Lake Champlain. The final settlement of this portion came in the Webster-Ashburton treaty of 1842.

The commissioners did not feel themselves empowered to settle the disputed boundary in the northeast, and the sovereignty of the islands in the Bay of Fundy was left unsettled. From the point which the commission had deter-

mined as the mouth of the St. Croix to the ocean was twenty miles, across islands, some large and valuable, and some settled. Great Britain claimed jurisdiction over all of these with the exception of Moose Island, which was held by the little town of Eastport. The question of this boundary came up between Rufus King and Lord Hawkesbury in 1803, and left unsettled. At the last moment, in the War of 1812, the British captured Moose Island with the hopes of retaining it as "spoils of war." In the treaty the island was retained and the boundary was left as unsettled as before. For a third time this question was given to a commission for settlement and only its lack of proper jurisdiction is recorded. The importance and desirability of settling this question does not seem to have been realized. While the northwestern boundary was settled in 1846, the twenty miles of disputed boundary in the east remained as it did when the commission of Jay's treaty left it. On July 16, 1891, the Canadian cruiser "Dream" seized seven fishing boats on the charge they were fishing in Canadian waters. Much interest was aroused and a convention was drawn up between the United States and Great Britain at Washington on July 22, 1892. Article II of this convention provided for a commission to settle the boundary. "The phrasing of this convention furnishes in itself a most excellent example of how a thing ought not to be done."[84] A meeting was held in July, 1893, and nothing resulted. The last meeting was held in 1895, and the only agreement reached was to report separately upon their proceedings. The result was that a full and detailed account of all operations was made by the American commissioners and submitted to the Department of State. At Washington a rational boundary line was laid out, and according to this determination, range signals and monuments were actually erected. These remain and the acceptance of them in the

[84] T. C. Mendenhall, "Twenty Unsettled Miles in the Northeast Boundary." Proceedings of American Antiquarian Society, Vol. XI.

immediate neighborhood will make easier the work of some future commission.

Articles VI and VII provided for commissions to settle the amount of the debt due British creditors before the Revolution and the amount due as an indemnity by Great Britain for the spoliation of American commerce.

The commission on the confiscation of debts met in Philadelphia, May 29, 1797, and was suspended on July 31, 1798. Some differences of opinion were to be expected, but the discussions developed personal feelings. Mr. Macdonald, one of the British commissioners, "who possessed a sense of duty unmitigated by a sense of proportion," had made himself disagreeable in many particulars. Matters reached an unbearable condition when he submitted a resolution declaring that from the beginning of the Revolutionary War down to the time of the Treaty of Peace, the United States, whatever may have been their relations with other powers, stood to Great Britain in a state of rebellion. Americans maintained the principle that the Treaty of Peace was not a grant of our independence, but a recognition of it. The American commissioners took the resolution as an insult and withdrew. Upon March 29, 1802, our minister at London, Rufus King, was instructed to negotiate explanations for this article. His Britanic Majesty preferred, rather than negotiate such an article, to avoid further expense and discussion by fixing the debt, for which the United States was held responsible, at a given sum. Mr. King was so instructed, and the convention of January 8, 1802, resulted.[85] One article provided for the continuance of the commission under the seventh article of Jay's treaty. In regard to the sixth article of the same treaty it was provided that the United States should pay six thousand pounds in three annual installments to relieve herself from the obligation thereby assumed.

[85] American State Papers, Foreign Relations, Vol. II. *Vide* Appendix B, Explanatory Articles.

Of all the tribunals which sat under Jay's treaty, the one which was convened at London under the seventh article is the most important and interesting. The purpose of the commission was to dispose of the American claims against Great Britain for the captures made under the orders of council, and the British claims against the United States' failure to enforce neutrality.

The persons composing this board were worthy of the question. Christopher Gore and William Pinckney were appointed from America, and John Nicholl, succeeded by Maurice Swabley, and John Anstey represented Great Britain. The fifth, chosen by lot, was John Trumbull of Connecticut.

The question of jurisdiction divided them for a time, but was settled by Lord Chancellor Loughborough in that "the doubt respecting the authority of the commission to settle their own jurisdiction was absurd, and that they must necessarily decide upon cases being within or without their competency."

Other important questions were regarding contraband goods, rights of neutrals, and the finality of the decisions of the prize courts. In their solution, Pinckney's discussions are pronounced by Wharton to be "finished models of judicial eloquence, uniting powerful and comprehensive arguments with a copious, pure and energetic diction." The session of the board had been interrupted from July 30, 1799, to February 15, 1802, by the dissolution of the tribunal under the sixth article. The work was closed February 24, 1804, all business having been completed. The recovery from this commission is put at $11,650,000.[86] Trumbull said: "The whole of this sum was promptly paid to each client, or his assignee; for after a careful and accurate examination of the merits of every case of complaint, the awards of the board were made in favor of each individual,

[86] This is variously estimated from $10,345,000 to $11,656,000. Moore gives the above. *Vide* American State Papers, Foreign Relations, Vol. II, pp. 119-123.

in the form of an order to pay, and payable at the Treasury of Great Britain; nor do I recollect even to have heard a single complaint, of the delay of an hour, in any instance of an award presented for payment.''[87]

The total of the awards paid by the United States appear to have been $143,428.14. The main point in this settlement was that a government is liable to damages for a neglect to perform its neutral duties. This was the foundation of the awards made at Geneva in 1872.

2. There were other principles of constitutional and international law which were brought out in this treaty of 1794. Since this was the first treaty entered into by the United States under the present government, some questions of constitutional law would naturally be raised.

The discretionary power of the House of Representatives in regard to voting appropriations for the execution of a treaty has nothing to do with the treaty proper, except that it was here raised for the first time. The declaration made by the House has been affirmed repeatedly in later years whenever treaties requiring extensive or important legislation have come up for discussion.[88] The question remains as unsettled by courts or legislature as it was in the year 1796. There is a parallel to this difficulty in the treaty-making power of the crown of England, which requires the Commons to vote appropriations to His Majesty's tracts. Any discretionary power which the Commons may have maintained has never been recognized by the King.

Jay's treaty has been criticized by Lyman[89] as a treaty accomplishing nothing. But its material benefits have been given,[90] and in addition to the principles of international law which were raised or established, it confirmed the title of the United States to membership in the ''family of nations.''

[87] John Basset Moore, ''American Diplomacy,'' p. 207 *et seq.*

[88] *Vide* ''Reports on the Law of Civil Government in Territory Subject to Military Occupation by the Forces of the United States,'' by Charles E. Magoon, 1903, for a list of these occasions and a discussion of the principles involved.

[89] Lyman, ''Diplomacy of the United States,'' p. 222.

[90] *Supra* Section 1.

A spirit of international comity was here more strongly developed than at any previous period of relations with Great Britain.

Under commercial regulations the intention to enter a blockaded port was declared no cause for condemnation.[91] The declaration that the ships of war of one of the contracting parties should be hospitably received and protected in the ports of the other was a courtesy in the general usage of nations here endorsed.[92]

The treaty provides that British subjects, then owning lands in the territory of the United States, may continue to hold them according to their respective titles. And the Supreme Court held that these provisions are parts of the supreme law of the land, being a constitutional exercise of the treaty-making power.[93]

The ninth article provides that British subjects holding lands in the United States, and their heirs, so far as their lands are concerned, and the remedies incident thereto, shall not, as aliens, have their estates confiscated. The parties, however, must show that the title of the land in question was in their ancestors when the treaty was made,[94] although their actual possession was not necessary.[95] Nor was it necessary that present holders should become citizens,[96] nor did the article intend to include any other persons than such as were British subjects or American citizens.[97] Several cases were then raised in an attempt to reclaim lands upon the termination of the treaty by the War of 1812. But it was held that the termination of an international compact does not destroy property rights already vested under it.[98]

From the policy of confiscating debts, many cases arose, especially in the south. The history of such acts is given in

[91] 4 Cranch 185.
[92] Wharton, "International Law Digest," Vol. II, p. 159.
[93] 7 Cranch 603.
[94] 1 Wheaton 300; 3 Peters 242.
[95] 7 Wheaton 534.
[96] 3 Wheaton 594.
[97] 4 Wheaton 453.
[98] 8 Wheaton 464.

Cushing's opinion[99] of November 24, 1790. The confiscation of the estates of American refugees, as described in the treaty, had been carried out. Part of the money had been paid creditors and the rest placed in the state treasuries. Such action was annulled by the treaty of peace and the British subjects had their estates restored and profits accounted for. All justice in debts had been given to British subjects and American citizens until paper money was substituted. The effects of continental currency are well known. The proceedings of the commission settling this matter have been explained.[100] The court holds that debts contracted, and interrupted by war, may be legally confiscated, but such is not generally done from policy.[101]

One of the serious causes of complaint against the treaty was the admission of provisions as contraband of war.[102] This was the principle Great Britain wished to establish, and which was endorsed by Wolfius and Vattel. It was never completely decided one way or the other. In general, the modern law holds them not contraband, but they may become so under circumstances arising out of peculiar conditions.[103]

Finally, an interesting question was raised during the negotiations as to the legal right of Great Britain to the slaves she had exported. The British negotiator not only claimed that by war property in movables was acquired as soon as such came within the enemy's lines, but that slaves were men, not property.[104] This latter principle was never established in international law, but the question involved was decided in favor of Great Britain, and no indemnity was given for the seizure of slave property.

3. By depriving the south of this great factor in its

[99] Opinions of Attorney Generals. *Cf.* American State Papers, Vol. I, p. 224.
[100] *Supra* p. 57.
[101] 2 Martin's North Carolina Reports, p. 83.
[102] *Vide* p. 24.
[103] 1 C. Robinson 189, High Court of Admiralty.
[104] American Historical Reports, 1901, Vol. I.

agricultural production,[105] England carried out her policy of injury to American commerce. To counteract this purpose, America met monopoly with monopoly, restriction with restriction. There was a great danger to the United States in this conduct. "To close to foreigners any of our ports, as many of them were closed to us, would mean the ruin of those ports and probably the immediate end of the nation."[106] Our policy until 1790 had been to open our ports to all foreign nations and by granting commercial privileges, hoped to receive them. This policy failed, and the one of retaliation and restriction resulted. But our economic conditions prohibited the execution of this method, and Jay's treaty marks the first step to gain by negotiations what could not be won by favor or retaliation. Great Britain was under a great advantage in this treaty from the fact that British commerce was established on an abundant experience, while ours lacked maturity and improvement.

It was the commercial article which excited the greatest hostility. In addition to the objections that right of search and impressment were not prohibited, free ships did not make free goods and the lack of indemnity for commercial spoliations, there was the complaint against the price paid for limited privileges with the West Indies and the limitations of general carrying trade.

In behalf of commercial interests, the Senate showed great wisdom and foresight in rejecting the twelfth article. By it ship-timber, tar, hemp, sails, and copper in sheets were declared contraband of war, although declared free in all other treaties between the United States and other nations. This would have limited our carrying trade with Europe in the following years when it was very important. By the article cotton was also prohibited from exportation. The importance of this produce was as yet unappreciated in the United States. Jay evidently did not know the industry

[105] *Vide infra*, Section 5.

[106] Thomas W. Page, "Earlier Commercial Policy of the United States," Journal of Political Economy, Vol. X, p. 177.

had been started, or that it was of any considerable interest.[107] A small quantity was exported from Georgia in 1783. In 1789 a member in Congress stated that the southern states were intending to cultivate cotton, and "if good seed could be procured, he believed they might succeed." It was not cultivated much for exportation until 1791 or 1792, but from that date it had a rapid growth in commercial importance.[108]

The advantages which were lost by the treaty were: The right of a special or general embargo, the right of sequestration as far as Great Britain was concerned, the right of discriminating against British goods in favor of those of other nations, and the right of suspension of commercial intercourse was especially stipulated against, for a limited time. These restrictions were viewed with grave apprehensions by statesmen in opposition to relations with Great Britain. They were considered as limitations upon the national sovereignty of the United States.

These were the objections which seemed at the time to be well founded. But the distressful picture was overdrawn. On both sides the treaty created a disposition to try some other policy. Under Jefferson, our citizens believed it would be best if governments would cease striving for the ascendancy of the sea, and permit the cheapest carrier to get the freight. Their reason was not economic, but rather a belief that America could carry at less cost than any other nation.

In England it was found that the advantages of their treaty were failing to kill the wonderful vitality of the "Yankee marine, with no right to exist." The amount of

[107] Lyman, "The Diplomacy of the United States," p. 220.

[108] "A Statistical View of the Commerce of the United States," Pitkin.

1791	189,316 lbs.
1792	138,328 lbs.
1793	487,600 lbs.
1794	1,601,760 lbs.
1795	6,276,300 lbs.

registered tonnage, employed in foreign trade, made rapid progress.[109] This growth continued, notwithstanding the restrictions of Jay's treaty which had been finally assented to by the merchants as a means of obtaining compensation for their losses, otherwise than from the United States Treasury. It was also adopted as an alternative of war, which would have ruined one of the most thrifty periods in American commerce.

The influence of the treaty is also apparent in our commerce with France and England. The belief of Washington's administration that British relations were of more value than French is materially justified from the following figures. The year and valuation of exports with France and her colonies is shown as follows:

1797	$12,449,076
1798	6,968,996
1799	2,780,504
1800	5,163,833

With Great Britain and colonies:

1797	$9,212,235
1798	17,184,347
1799	26,546,987
1800	27,310,289

The East India trade was found so satisfactory that no modification was made until the expiration of the commercial part of the treaty in 1807. In December of that year Pinckney and Monroe made slight changes, which lasted until April 30, 1811, when Parliament made complete regulations.[110]

[109] Pitkin, "A Statistical View of the Commerce of the United States," p. 389.

1793	367,734 tons
1794	438,862 tons
1795	529,470 tons
1796	576,733 tons
1797	597,777 tons
1798	603,376 tons

[110] Pitkin, "A Statistical View of the Commerce of the United States," p. 174.

The war in which England was engaged with France in 1793, with Spain in 1796, and which continued until all the nations of Europe were involved, threw into the hands of the American merchant a large part of the world's commerce. This was carried on under the difficulties rendered by England's superior naval forces which she was allowed to use in default of prohibitory articles in Jay's treaty.

4. The last matter for consideration under the effects of the treaty is its political result with the foreign nations interested in our relations with Great Britain. These nations were Spain and France.

The actions of Spain were only such as were dictated by the French ministry and of minor consideration. At this period Spain held Louisiana, and her objection to Jay's treaty, especially the explanatory article of May 4, 1796, was the favor England received in the navigation of the Mississippi River. Spain deemed this sufficient cause for retaining garrisoned towns along the river and refusing to run out the boundary lines between her possessions and those of the United States. Any trouble which might have occurred was avoided by the Treaty of St. Ildefonso in 1800 between France and Spain, in which Louisiana was ceded back to France.

A far more active interest in Jay's negotiations and treaty was taken by the French nation. In America, the action of the party in sympathy with France reflected the hostility which was exhibited by that country against any amicable relations with Great Britain.[111]

Before war had been declared between these European nations in 1793, France formed the policy of injuring Great Britain through a close alliance, commercially and politically, with the United States. Her treaty with America in 1787 was an early step in this direction. When peaceful negotiations were decided upon between America and England, France made every possible objection. The letters

[111] *Supra,* p. 46.

from our minister at Paris to President Washington cautioned our government against the possible hostility of France. The other method by which her influence was exercised on the administration was by her sympathizers in America.[112] The party methods were radical,[113] and became more so when its partisans failed to hinder the administration in its purpose. While the negotiations were going on in London, Genet, in America, was stirring up all possible opposition, not only against the conjectured treaty but against the character of the men interested in the peaceful results of the mission.

When the treaty was finished a copy was immediately demanded by the French government through our minister, Mr. Monroe. Jay very properly declined to reveal the unratified document, and French hostility increased. During the secret discussion in the Senate, the opposition grew and long detailed accounts relating to the political conditions were sent by the French minister to his home government.[114]

Upon the publication of the treaty and the full knowledge of its contents, the red flames of opposition burst forth in all their fury. The presence of Monroe at Paris and the confidence the French ministry had in him as one of their sympathizers probably averted an immediate rupture. As it was, he was constantly employed in explanations and answering complaints of the French government.[115] Although there were other accusations, Jay's treaty was the chief cause of complaint. All the detailed objections can be classed under two heads: the declaration of American neutrality and the protection granted British interests in the United States.[116]

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[112] Appendix D (3).

[113] *Supra*, p. 46.

[114] Appendix D (5).

[115] State Papers, Foreign Relations, Vol. I. French Affairs, p. 559 *et seq.* *Cf.* Lyman, "Diplomatic History of the United States," p. 156 *et seq.*

[116] John Basset Moore, "Diplomacy of the United States."

The relations between the two countries became so distant that the ministers of both were recalled. Adet was instructed to inform this government that the treaty of 1787 was at an end.

Serious trouble might have resulted but for the fact that France was so unstable in her government that it was impossible to maintain a policy consistently and for any length of time.

The French party in America, like Genet, carried its policy too far and produced a reaction upon the people.[117] The treaty was ratified,[118] notwithstanding the frenzied opposition, and the party passed away in becoming silence.

5. But one other interest remains. There has been a natural tendency to omit the influences brought to bear upon the treaty of 1794, both in its making and in its ratification, by the slavery interests of the United States. This is accounted for by the fact that slavery is not mentioned in the treaty itself, and it is in this omission that the interest lies.

The real significance of the negotiation in this respect lies not so much in the fact that by it the immediate event was changed as that upon this occasion the question made its earliest formal appearance in the diplomacy of the nation. A few claims[119] had been made previously in its behalf, but for the first time in 1794 the public sentiment was brought definitely to bear upon the subject.

The policy of the British during the war had been to weaken colonial power by depriving them of the services of their slaves. In conformity with this attitude, General Clinton and Lord Cornwallis issued a proclamation offering freedom to all slaves escaping into British lines. The effect was immediate and disastrous to agricultural interests. Virginia alone lost thirty thousand slaves in Cornwallis' invasion in 1778. Jefferson estimates that Georgia lost

[117] *Vide supra*, p. 43.

[118] Appendix D (4).

[119] First, discussion followed for a decade under Adams with Carmarthen and Pitt, then Governeur Morris with Pitt and the Duke of Leads, finally Jefferson with George Hammond. American State Papers, Foreign Relations, Vol. I, p. 188 *et seq.*

seven-eighths of her negroes, and Ramsay is responsible for the statement that South Carolina, between 1775 and 1783, lost twenty-five thousand slaves valued at twelve million five hundred thousand dollars.[120]

After the surrender at Yorktown, the exportation of the negroes was a consistent finality to the British policy. A commission was appointed by Washington to watch the departure of British ships, but their inspections were ignored or prevented, and the theft of American slaves continued. It was for a compensation of such action that Jay was instructed to exact an indemnity from England.

In the negotiations, the slaves in question were divided into three classes: First, those captured and disposed of during the war, and concerning these both Grenville and Jay agreed that the United States had no interest; second, those remaining with and belonging to Americans in the British lines. Jay claimed that as they belonged to and remained with Americans, even within the British lines, the treaty was fully applicable. The enemy had never taken them from their masters or treated them as booty, so property rights remained unchanged. Grenville was doubtful of the validity of such a proposition. The third class included those negroes who, confiding in the promise of freedom, fled to the British army. The greatest difficulty arose over this class. Jay maintained that their flight from American masters and reception in the British lines did not extinguish their slave character. Grenville maintained all property crossing into British lines became British property, therefore free.

The question then resolved itself into whether the clause in the treaty of 1783 called for a restoration of all negroes in the British lines at the close of the war or applied to those who might fall into British hands after the treaty of peace. The right of the question was undoubtedly upon the British side, and they became firmer and more impressed

[120] American Historical Report, 1901, Vol. I, p. 273 *et seq.* Article by F. A. Ogg, "Jay's Treaty and the Slavery Interests of the United States."

with their argument as the negotiations proceeded. As a matter of the intentions of the negotiators of the treaty of peace the attitude of the United States was absolutely correct. All negroes in the British lines were to be returned to their rightful American owners.

The discussions between Jay and Grenville came to nothing. Jay was not the man to take particular delight in upholding the slavery interests of his country. He had expressed himself[121] that the United States must abolish slavery, or "their prayer to Heaven for liberty would be impious." The slavery question was reported by Jay as one of the subjects of existing differences, and the treaty with no compensation for the southern losses came into Congress.

It is not surprising that the document met with animated resistance from the south. The debates in Congress discussed the slave question thoroughly,[122] and the attitude of some of the southern states was too rabid to be reviewed with any pleasure.[123] Jay's treaty brought before the nation the differences of opinion and interest in this economic institution. These differences were culminated over a half century later in an internecine war.

The commercial articles of the treaty went out of effect by their own stipulation on October 28, 1807. The entire Treaty of Amity, Commerce, and Navigation was made null and void by the War of 1812. Its detriments and benefits have merged in the march of events.

And what position had the treaty of 1794 in this progress?

Governments realize their efficiency through revolution and reconstruction. The Revolution of 1776 gave independence to a new nation. The treaty of 1794 was a factor in the construction of its international relations and confirmed its status as a sovereign government.

Both events have passed into history and, according to their importance, are enrolled in the annals of the nation.

[121] American Historical Reports, 1901, Vol. I, p. 282.
[122] *Vide supra,* pp. 39-40.
[123] *Ibid.* and Appendix C (3).

APPENDICES.

Appendix A.—Extracts from the diplomatic correspondence relating to the Treaty of 1794.

Appendix B.—Synopsis of the Treaty of Amity, Commerce, and Navigation between Great Britain and the United States.

Appendix C.—Extracts from the American papers published by the party in opposition to the Treaty.

Appendix D.—French diplomatic correspondence regarding Jay's Treaty.

Appendix E.—A Map, with its consideration and explanation, relating to certain stipulations in the Treaty of 1794.

APPENDIX A.

Extracts from the diplomatic correspondence relating to the Treaty of 1794.

(1) May 6, 1794. Instructions to Jay as Envoy Extraordinary.

(2) London, July 11, 1794. Jay to Alexander Hamilton.

(3) London, November 19, 1794. Jay to Edmund Randolph.

(1) Instructions to Jay as Envoy Extraordinary.[124]

"Sir:—The mission upon which you are about to enter, as Envoy Extraordinary to the Court of London, has been dictated by considerations of an interesting and pressing nature. * * *

A full persuasion is entertained that, throughout the whole negotiation, you will make the following its general objects: To keep alive in the mind of the British minister that opinion which the solemnity of a special mission must naturally inspire, of the strong agitations excited in the people of the United States, by the disturbed condition of things between them and Great Britain; to repel war, for which we are not disposed, and into which the necessity of vindicating our honor and our property may, but can alone, drive us; to prevent the British ministry, should they be resolved on war, from carrying with them the British nation; and, at the same time, to assert, with dignity and firmness, our rights, and our title to reparation for past injuries.

[124] American State Papers, Foreign Relations, Vol. I, p. 427.

I. One of the causes of your mission being the vexations and spoliations committed on our commerce by the authority of instructions from the British government, you will receive from the Secretary of State the following documents. * * *

Compensation for all the injuries sustained, and captures, will be strenuously pressed by you. * * *

If the British ministry should hint at any supposed predilection in the United States for the French nation, as warranting the whole or any part of these instructions, you will stop the progress of this subject, as being irrelative to the question in hand. * * *

II. A second cause of your mission, but not inferior in dignity to the preceding, though subsequent in order, is to draw to a conclusion all points of difference between the United States and Great Britain, concerning the treaty of peace. * * *

III. It is referred to your discretion whether, in case the two preceding points should be so accommodated as to promise the continuance of tranquillity between the United States and Great Britain, the subject of a commercial treaty may not be listened to by you, or even broken to the British ministry. If it should, let these be the general objects:

1st. Reciprocity in navigation, particularly to the West Indies and even to the East Indies.

2d. The admission of wheat, fish, salt meat, and other great staples, upon the same footing with the admission of the great British staples in our ports.

3d. Free ships to make free goods.

4th. Proper security for the safety of neutral commerce in other respects; and particularly:

By declaring provisions never to be contraband, except in the strongest possible case, as the blockade of a port; or, if attainable, by abolishing contraband altogether;

By defining a blockade, if contraband must continue in some degree, as it is defined in the armed neutrality;

By restricting the opportunities of vexation in visiting vessels; and

By bringing under strictest management privateers; and expediting recoveries against them for misconduct.

5th. Exemption of emigrants, and particularly manufacturers, from restraint.

6th. Free exports of arms and military stores.

7th. The exclusion of the terms "the most favored nation," as being productive of embarrassment.

8th. The convoy of merchant ships by the public ships of war, where it shall be necessary, and they be holding the same course.

9th. It is anxiously to be desired that the fishing grounds now engrossed by the British should be opened to the citizens of the United States.

10th. The intercourse with England makes it necessary that the liabilities arising from alienage in cases of inheritance should be put upon a liberal footing, or rather abolished.

11th. You may discuss the sale of prizes in our ports while we are neutral; and this perhaps may be added to the considerations which we have to give, besides those of reciprocity.

12th. Proper shelter, defence, and succor against pirates, shipwreck, etc.

13th. Full security for the retiring of the citizens of the United States from the British dominions in case a war should break out.

14th. No privateering commissions to be taken out by the subject of the one, or citizens of the other party, against each other.

15th. Consuls, etc., to be admitted in Europe, the West and East Indies.

16th. In case of an Indian war, none but the usual supplies in peace shall be furnished.

17th. In peace, no troops to be kept within a limited distance from the lakes.

18th. No stipulation whatsoever is to interfere with our obligations to France.

19th. A treaty is not to continue beyond fifteen years.

IV. This enumeration presents generally the objects which it is desirable to comprise in a commercial treaty; not that it is expected that one can be effected with so great a latitude of advantages. * * *

But if a treaty of commerce cannot be formed upon a basis as advantageous as this, you are not to conclude or sign any such, it being conceived that it would not be expedient to do anything more than to digest with the British ministry the articles of such a treaty as they appear willing to accede to, referring them here for consideration and further instruction previous to a formal conclusion.''

(2) Jay to Alexander Hamilton.

London, July 11, 1794.

* * * ''Appearances continue to be singularly favorable, but appearances merit only a certain degree of circumspect reliance. The delays occasioned by the new arrangement of the ministry cannot be of long continuance. Circumstances must soon constrain them to form some ultimate system relative to the United States; and although I have much reason to hope that it will be favorable to our wishes, yet I confess I am not without apprehensions that certain points not by us

to be yielded will occasion difficulties hard to surmount. Personally I have every reason to be satisfied, and officially I have as yet no reason to complain.

* * * * * * * * * * * *

I will endeavor to accommodate rather than dispute; and if this plan should fail, decent and firm representations must conclude the business of my mission. As yet I do not regret any step I have taken. I wish I may be able to say the same at the conclusion.''

(3) JAY to EDMUND RANDOLPH.

London, November 19, 1794.

''SIR:—The long expected treaty accompanies this letter. * * * The difficulties which retarded its accomplishment frequently had the appearance of being insurmountable; they have at last yielded to modifications of the articles in which they existed, and to that mutual disposition to agreement which reconciled Lord Grenville and myself to an unusual degree of trouble and application. They who have leveled uneven grounds know how little of the work afterwards appears. * * *

My opinion of the treaty is apparent from my having signed it. I have no reason to believe or conjecture that one more favorable to us is attainable.

Perhaps it is not very much to be regretted that all our differences are merged in this treaty, without having been decided; disagreeable imputations are thereby avoided, and the door of conciliation is fairly and widely opened by the essential justice done, and the conveniences granted to each other by the parties.

The term limited for the evacuation of the posts could not be restricted to a more early day; that point has been pressed.

* * * * * * * * * * * *

The 6th article was *sine qua non,* and is intended as well as calculated to afford that justice and equity which judicial proceedings may, on trial, be found incapable of affording. * * *

The credit of some of the States having, to my knowledge, suffered by appearances of their being favorable to the idea of sequestrating British debts on certain occasions, the 10th article will be useful. * * *

* * * The duration of this article (12) is short, but if we meet the disposition of this country to good humor and cordiality, I am much inclined to believe it will be renewed. The duration of the treaty is connected with the renewal of that article, and an opportunity will then offer for discussing and settling many important matters. * * *

It will give you great pleasure to hear that great reserve and delicacy have been observed respecting our concerns with France.''

* * * * * * * * * * * *

APPENDIX B.

Synopsis of the Treaty of Amity, Commerce, and Navigation between Great Britain and the United States.[125]

The introduction designates the purpose of the treaty and names the plenipotentiary from each county empowered to negotiate such.

ARTICLE I. Establishes peace and friendship between his Britannic Majesty and the United States.

ARTICLE II. His Majesty consents to withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. The evacuation is to take place on or before the 1st of June, 1796. All settlers in those parts to enjoy private property rights and become citizens of the United States in one year unless allegiance is declared to His Britannic Majesty.

ARTICLE III. Allows to His Majesty's subjects and the citizens of the United States, and to the Indians dwelling on either side of the said boundary line, freedom to pass and repass by land or inland navigation into the respective territories of the two parties. The country within the limits of the Hudson's Bay Company is excepted. Vessels belonging to the United States are not to be admitted into the ports of His Majesty's said territories, nor British vessels from the sea into rivers of the United States beyond the highest ports of entry for foreign vessels from the sea. The navigation of the Mississippi, however, is to be entirely free. Goods and merchandise shall be conveyed into the territories of His Britannic Majesty by American citizens, and into the territories of the United States by British subjects, subject to the regulations established by both parties. The article is intended to render local advantages to each country.

ARTICLE IV. Provides for a joint survey of the Mississippi River to determine the northwest boundary line.

ARTICLE V. Authorizes a commission of three members to determine which is the river St. Croix, intended by the Treaty of Peace of 1783 as part of the northeast boundary line.

ARTICLE VI. Gives to British subjects the power of recovering debts due to them by American citizens previous to the treaty of peace; which debts have not been recovered hitherto, on account of some legal impediments. The United States agree to make full and

[125] The treaty in full may be found in the Annual Register, 1795, and State Papers, Foreign Relations, Vol. I.

complete compensation to the creditors who have suffered by those impediments. The amount of the losses and damages is to be ascertained by five commissioners—two to be appointed by Great Britain, two by the President of the United States, and one by the other four. * * * Three of the said commissioners shall constitute a board, and shall have power to do any act appertaining to the said commission, provided that one of the commissioners named on each side, and the fifth commissioner shall be present, and all decisions shall be made by the majority of the voices of the commissioners then present; eighteen months from the day on which the said commissioners shall form a board, and be ready to proceed to business, are assigned for receiving complaints and applications; but they are nevertheless authorized, in any particular cases, in which it shall appear to them to be reasonable and just, to extend the said term of eighteen months for any term not exceeding six months after the expiration thereof. The said commissioners shall first meet at Philadelphia, but they shall have power to adjourn from place to place as they shall see cause.

LEAVE OUT

The award of the said commissioners, or any three of them as aforesaid, shall in all cases be final and conclusive.

ARTICLE VII. Allows indemnification, by the British government, to such of the citizens of the United States as have suffered, during the late war, by irregular and illegal captures. The United States also agrees to indemnify British subjects for irregular, illegal captures taken by American ships during the war. Five commissioners, acting under the same directions and oath as those in the preceding article, are to sit at London upon all cases which have not been agreeably settled according to the letter from Mr. Jefferson to Mr. Hammond, Philadelphia, September 5, 1793.

ARTICLE VIII. Provides for the expenses of the commissioners in the sixth and seventh articles above and the filling of their vacancies.

ARTICLE IX. It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of His Majesty, shall continue to hold them according to the nature and terms of their respective estates and titles therein; and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens.

ARTICLE X. Stipulates no debt, shares of public money, or public or private bank funds shall ever be confiscated or sequestered in national differences.

ARTICLE XI. Guarantees perfect liberty of navigation and commerce among people of both countries under the following articles.

ARTICLE XII. Allows the citizens of the United States to carry the produce of the United States to the West Indies, in vessels of not more than seventy tons burden. The citizens are also allowed to carry away the produce of the islands to the territories of the United States alone. This article is to continue in force for two years after the present war, when further regulations are to be made. (This article was suspended by the resolution of the Senate advising ratification, and the suspension was agreed to by Great Britain.)

ARTICLE XIII. His Majesty consents that vessels belonging to American citizens shall be admitted to all seaports of the British territories in the East Indies. Said citizens may freely carry on a trade between said territories and the United States, in all articles of which the importation or exportation is not entirely prohibited. Provided only, that it shall not be lawful for them in time of war between Great Britain and any other state to export from said territories, without permission, any military or naval stores or rice. Coasting trade is prohibited and no higher duties are to be exacted than payable on British vessels.

ARTICLE XIV. Reciprocal and perfect liberty of commerce and navigation is guaranteed between the United States and the European territories of Great Britain.

ARTICLE XV. No higher duties shall be paid by the ships or merchandise of the one party in the ports of the other than the duties paid by other nations. No higher duties shall be paid upon importation or exportation than the duties paid on the importation or exportation of similar articles, the product of other nations.

ARTICLE XVI. Relates to the appointment of consuls for the protection of trade.

ARTICLE XVII. Any vessel captured or detained on suspicion of having enemy's goods is to be taken to the nearest port, and if any such property is found, it alone is to be taken and the vessel allowed to proceed. Delay is to be prevented or properly compensated.

ARTICLE XVIII. Decides what articles the term contraband can be applied to. When provisions are regarded as such and seized, the owners shall be made speedy indemnification. Any vessel sailing for a port with a cargo not contraband, not knowing the port blockaded, will be allowed to put to any other port unless she again try to enter, when she will be held, and when such port is surrendered returned to the owners.

ARTICLE XIX. Provides for the security of the respective subjects and citizens, and for the preventing of injuries by men-of-war.

ARTICLE XX. Relates to the refusal of the respective parties to receive pirates into any harbors or towns, and to the seizure of goods and merchandise taken by pirates.

ARTICLE XXI. Stipulates that the subjects and citizens of two nations shall not do any acts of hostility against each other, and shall not accept commissions from foreign states or princes, to commit hostilities.

ARTICLE XXII. Neither contracting party shall authorize any act of reprisal against the other, on complaint of injuries or damages, until the first party has presented a statement as proof thereof.

ARTICLE XXIII. Relates to the treatment of ships, officers, and crews, in the respective ports of the two powers.

ARTICLE XXIV. Provides that privateers of nations at enmity with either of the two powers shall not arm their ships in the respective ports of the two powers, or sell what they have taken.

ARTICLE XXV. It is lawful for ships of war and privateers to take their captured ships into either party's ports and be there subject to certain privileges and obligations and are to be assisted to an early departure. No merchant vessel is to be taken within cannon-shot of the coast, or full satisfaction is guaranteed.

ARTICLE XXVI. In case of war merchants and citizens or subjects of one are permitted to reside in the territory of the other nation and to continue their trade.

ARTICLE XXVII. Agrees that the two powers shall respectively deliver up persons charged with murder and forgery.

ARTICLE XXVIII. Alluding to the preceding articles, this states that the first ten articles shall be permanent, and that the subsequent articles (the twelfth excepted) shall be limited in their duration to twelve years. The treaty is to be binding and obligatory as soon as it is ratified.

November 19, 1794.

GRENVILLE (L. S.)
JOHN JAY (L. S.)

EXPLANATORY ARTICLES.

Article explanatory of Article III of the Treaty:

May 9, 1796.—This article related to the passage of Indians into the territories of both nations.

Article explanatory of Article V of the Treaty:

June 5, 1798.—This article authorized the commission under Article V to designate the source of the St. Croix River in any manner they saw fit otherwise than by latitude and longitude.

Convention for the payment of indemnities and settlement of debts:

January 8, 1802.—This convention of five articles provides for the payment to Great Britain of £600,000 in full for the claims submitted

under Article VI of the Treaty of 1794, and for the continuance of the commission under Article VII; and it was agreed the awards should be paid in three annual installments; furthermore, that creditors of either country should meet with no impediment in the collection of their debts.

APPENDIX C.

Extracts from the American papers published by the party in opposition to the treaty.

(1) Extract from the *New York Journal,* August 2, 1794.

(2) Proceedings in Philadelphia according to the Democratic Printer, July 4, 1795.

(3) The Richmond Notice, July 31, 1795.

(1) Extract from the *New York Journal.*

August 2, 1794.

"The late appointment of John Jay, as Envoy Extraordinary to the Court of London, brought so strongly to the recollection of the people of this country his former iniquitious attempt to barter away their most valuable right, that they could not refrain from openly testifying their abhorrence of the man, whose appointment, at this critical period of their affairs, they consider as tragically ominous. Although they had not forgotten, nor even faintly remembered, his former act of treason against them; yet they hoped, from the office he filled, he was in as harmless a situation as he could be placed; and that no effort of power or policy could drag him forward, so long as he held his office, and set him once more to chaffering with our rights. With these impressions, a number of respectable citizens, of this place and its vicinity, on Saturday last, ordered a likeness of this evil genius of western America to be made, which was soon well executed. At the appointed hour, he was ushered forth from a barber's shop, amidst the shouts of the people, dressed in a courtly manner, and placed erect on the platform of the pillory. In his right hand he held uplifted a rod of iron; in his left, he held extended Swift's last speech in Congress, on the subject of British depredation, on one side of which was written:

'Nemo repente fuit turpissimus.' Juv. Sat. IV, 33.

'No man e'er reached the heights of vice at first.'

And on the other:

'—non deficit alter.' Virg. Aen. 6.

'A second is not wanting.'

About his neck was suspended by a hempen string Adam's defence of the American Constitutions, on the cover of which was written:

'Scribere jussit aurum.' Ov. Ep.

'Gold bade me write.'

After exhibiting him in this condition for some time, he was ordered to be guillotined, which was soon dexterously executed, and a flame instantly applied to him, which finding its way to a quantity of powder, which was lodged in his body, produced such an explosion that after it there was scarcely to be found a particle of the *disjecta membra Plenipo.* * * *

The Club of Charleston, South Carolina, solicited an adoption of the Jacobin Club at Paris. They also addressed Consul Margourit, who had actually granted commissions to privateers, in defiance of the President's proclamation of neutrality.''

(2) Proceedings in Philadelphia, According to the Democratic Printer.

July 4, 1795.

''At Philadelphia, on the 4th of July (the anniversary of the *glorious* Independence), Mr. Jay and the Senate were burnt in effigy. The mob, headed by one Abraham Coats, an old Whig, carried through the streets a transparent painting, of which the Democratic printer gave the following description: The figure of John Jay was upon it. The figure was in full statue, holding in his right hand a pair of scales, containing in one scale American Liberty and Independence, kicking the beam; in the other, British Gold, in extreme preponderance. In his left hand a treaty of Amity, Commerce, and Navigation, which he extended to a group of Senators, who were grinning with pleasure and grasping at the treaty. From the mouth of the figure issued these words, ''Come up to my price, and I will sell you my country.'' The figure was burned at Kensington amid the acclamations of hundreds of citizens. Thus ended the procession, and thus terminated the anniversary of American independence.''

(3) The Richmond Notice.

July 31, 1795.

Notice is hereby given, that *in case the treaty entered into by that d—n'd Arch Traitor, J—n J—y, with the British tyrant should be ratified,* a petition will be presented to the next General Assembly of Virginia at their next session praying that the said state *may recede from the Union,* and be left under the government and protection of One Hundred Thousand Free and Independent Virginians.

P. S.—As it is the wish of the people of the said state, *to enter into a treaty of amity, commerce, and navigation, with any other state, or states of the present Union,* who are averse to returning again under the galling yoke of Great Britain, the printers of the (at present) United States are requested to publish the above notification.

APPENDIX D.[126]

FRENCH DIPLOMATIC CORRESPONDENCE REGARDING JAY'S TREATY.

(1) April 14, 1796. Le Ministre Plénipotentiaire de la République Française (Adet) près les Etats Unis, Au Ministre des Rélations Extérieures.

(2) May 3, 1796. Le Ministre Plénipotentiaire de la République Française (Adet) près les Etats Unis, Au Ministre des Rélations Extérieures.

(3) June 20, 1796. Le Ministre Plénipotentiaire de la République Française (Adet) près les Etats Unis, Au Ministre des Rélations Extérieures.

(1) April 14, 1796.

Citoyen Ministre: Nos amis enfin viennent d'adopter un Plan pour la rejection du Traité. Dans leur dernier Comité Sécret, il a été arrêté que l'on feroit adopter par la Chambre Une résolution Conçue à peu prés dans les termes suivans: "Attendu que le Traité conclue entre la Grande Bretagne et les Etats unis paroît injurieux aux intérêts des Etats; Attendu que la Chambre manque de documens nécessaires pour en porter un jugement différent; Attendu que tous les renseignements qu'elle a demandé à cet égard lui ont été refusés, il est résolu qu'elle ne s'occupera pas des Loix relatives à ce Traité."

Bientôt, Citoyen Ministre, cette résolution sera soumise à la Chambre et aura la Majorité en sa faveur, s'il faut en croire les Membres les plus influans du parti républicain. Ils m'ont assûré qu'ils étoient certains de *cinquante sept* voix et que neuf membres de la Minorité étoient incertains sur le parti qu'ils avoient à prendre.

Quoique nos amis ne paroissent pas douter du succès, je n'ose pas vous le garantir, Citoyen Ministre; Je connois trop le caractère des Américains pour compter sur un acte de vigueur de la Chambre des représentans; et pour vous parler avec franchise, je serois étonné, si elle prend cette attitude fière que veulent lui donner les chefs du parti Républicain.

[126] The French Correspondence, regarding the treaty of 1794, is abundant and much in detail. Enough of it is given in this Appendix to show the interest and trend of French action.

Toute incertitude cependant cessera bientôt, Citoyen Ministre; la décision de la question qui s'agite maintenant à la Chambre, nous fera présager le sort de la résolution qui doit terminer toutes les discussions relatives au Traité de Jay. Un membre de la Minorité a proposé hyer que la Chambre des représentans fit les loix nécessaires pour l'exécution des Traités Conclus avec Alger, la Grande Bretagne, l'Espagne et quelques Nations indiennes. Cette proposition a excité des débats plus vifs que ceux qui avoient eu lieu jusqu'à ce jour; plusieurs amendemens ont été proposés; la division a été demandée; mais le Comité général n'a pris encore aucune détermination.

Si celle qu'il adoptera en conforme aux vües de nos amis, s'ils ont la majorité dans cette circonstance, il y a lieu de croire qu'ils l'obtiendront, lorsqu'il s'agira de la grand résolution; car les hommes qui se seront prononcés jusqu'à ce Moment dans le même sens, ne pourront plus changer d'opinion sans se deshonorer.

Signé P. A. Adet.

(2) May 3, 1796.

Citoyen Ministre: C'en est fait; le parti de l'Angleterre triomphe, et la Chambre des représentans a arrêté avant hyer qu'elle feroit la loi rélative à l'éxécution du Traité avec l'Angleterre. Vous trouverez cyjoint l'extrait de sa séance, et vous verrez qu'il s'en est peu fallu que nos amis ne restassent maîtres du champ de bataille; Ils étoient certains de la Victoire, Citoyen Ministre, si le Gouvernement françois s'étoit expliqué sur le traité, si les bruits de mon rappel n'étoient venus appuyer les raisons des membres qui interprêtoient le silence de la France en faveur du Gouvernement Américain, et qui avoient grand soin de dire que l'on avoit en conséquence rien à redouter de la France, et tout à craindre de l'Angleterre. En vain ai-je fait tous mes efforts pour detruire ces fausses impressions; je n'ay pu réussir: et quelques moyens que j'eusse pu employer de concert avec nos amis, m'étoit-il possible de ruiner les manœuvres et les intrigues du Ministre d'Angleterre qui pouvoit user de deux armes toujours victorieuses, la menace et la corruption. Elles ne luy ont été que trop utiles, s'il faut que j'en croië les rapports qui m'ont été faits; Il n'est pas le seul qui s'en soit servi; Cent Marchands, m'a-t-on assuré, ont fait une souscription de 500 Dollars chacun, pour acheter des souffranges en faveur du Traité. Les ont-ils distribués, ont-ils réussi, l'argent ou la crainte de l'Angleterre ont-ils décidé la question? je ne puis vous expliquer ce mystère. Vainement ai-je cherché à le pénétrer. Tout le monde se tait, et ceux qui avoient parlé de la souscription des marchands il y a quelques jours, gardent aujourd'hui le silence, ne repondent que d'une maniere ambigue aux Questions qu'on leur fait, et laissent voir par

là qu'on leur a commandé une discrétion à laquelle ils ne s'étoient pas cru d'abord obligés.

Je ne saurois vous peindre, Citoyen Ministre, le chagrin de nos amis dans les circonstances actuelles; ils voyent la liberté fortement menacée chez eux, ils voyent le royalisme qui ne s'était avancé que lentement, prêt à faire des progrès rapides. Déjà ses apôtres parlent, déjà les Sénateurs et John Adams à leur tête, disent hautement que la monarchie est le seul Gouvernement convenable à tous les Peuples. Un Sénateur de la minorité m'a rapporté confidemment qu'un de ses collegues lui disoit un jour. Nous vous connoissons, vous ne serez jamais sujet; il faudra vous couper le cou ou vous faire roi. Nos amis voyent l'orage destructeur de l'égalité se former peu à peu; ils auroient pu aisément dans les circonstances actuelles le dissiper; ils ne savent si plus tard ils en auront la puissance. Ils craignent de succomber au milieu de leurs efforts ou de ne pouvoir retablir la liberté qu'en parcourant les diverses périodes d'une révolution dont on ne peut calculer les effets ni determiner la durée. Tant d'élémens divers peuvent être opposés l'un à l'autre dans les mouvemens d'une fermentation intérieure; l'influence des intérêts Européens peut agir de telle sorte qu'ils ne portent pas sans être effrayés leurs regards sur l'avenir. Ils voyent déjà le Peuple Américain en armes combattant pour la royauté, et la République arroser de son sang les campagnes qu'elle fertilisoit de ses sueurs; cette population d'esclaves qu'elle fertilisoit de ses seueurs; cette population d'esclaves qu'elle renferme dans son sein, ces tribus d'Indiens qui l'entourent, instrumens dont l'ambition, la fureur, la vengeance peuvent s'emparer, ajoutent encore aux maux qu'il se fera lui-même si des évènemens qu'on n'ose espérer ne viennent pas inopinément à son secours. Et nous, Citoyen Ministre, qui ne pouvons espérer de tirer des avantages de ce pays qu'autant que le parti républicain dominera, à quoi devons nous nous attendre aujourd'hui? Nos intérêts vont être plus violemment froissés que jamais. On nous a desservi constamment sous le manteau de la neutralité. Aujourd'hui on le fera ouvertement; on n'usera plus de stratagème; on n'invoquera plus les ressources de la Chicane, les secours de la tourbe dévorante des gens de loi, la partialité des Tribunaux; on n'en appellera aux Traités Anglais dans tous les cas où nous reclamerons contre les faveurs accordées à nos ennemis; nous les verrons jouir des avantages que nous étions assûrés exclusivement par nos Traités, et nous en serons privés nous mêmes. Déjà, je vois que l'on se dispose à empêcher les corsaires de vendre leurs prises aux Etats Unis. Déjà le Consul Anglais à Charleston a demandé qu'on fit arrêter la vente d'une prise faite par un de nos corsaires, non parcequ'il avoit été armé aux Etats Unis, mais parceque l'article 25 du

Traité conclu avec la Grande Bretagne empêche les ennemis de cette puissance d'amener et de conduire leurs prises aux Etats Unis. Les Officiers du Gouvernement hésitent, ils n'ont pas dissimulé leur embarras à notre consul, et cependant le même article 25 du Traité Anglais leur dicte leur décision; mais ils craignent de déplaire à l'Angleterre, et je ne doute pas de voir réaliser ce que j'avois prévû dans mon N° 1re au Comité de Salut public, sur l'admission de nos prises aux Etats Unis, à cette violation de nos traités, sans doute on ajoutera de nouvelles vexations, et nous verrons la nation Française triomphante et respectée en Europe, recevoir ici des affronts d'un gouvernement timide et lâche que la crainte seuls gouverne, et qui s'humilie toujours devant la main qui le frappe. Mais, Citoyen Ministre, devons nous souffrir que ce gouvernement qui a trahi notre bonne foi, qui s'est joué de notre modération, joigne de nouveaux outrages à ses perfidies, et pour parvenir à l'exécution de ses projets, force le Gouvernement Français de rompre avec lui? Non, sans doute, l'intérêt de notre gloire, de notre dignité, l'intérêt même du peuple Americain, que nous devons sauver de l'oppression comme nous y avons arraché le peuple Batave, nous impose, ce me semble, l'obligation de mettre un frein a l'audace du parti Anglais et de tourner contre lui-même les armes dont il s'est servi contre nous.

En effet, Citoyen Ministre, Qui a engagé le Gouvernement à faire un Traité avec Londres? Le parti Anglois. Qui a fait ratifier le Traité par Washington? Le parti Anglois. Qui s'est agité pour faire passer ce traité à la Chambre des représentans? Le même parti. De quels gens est-il composé? Des Anciens Torrys, des négocians venus de la Grande Bretagne, des Présidens, Directeurs et Interessés de la Banque, des compagnies d'assûrance des Marchands. Ces hommes seuls ont des intérêts sur les batimens expediés en Angleterre; ce ne sera donc que sur ces hommes que péseront les mesures que je vous propose, et ce ne sera pas le peuple n'a rien à se reprocher qui en souffrira. * * *

Je ne sais pas, Citoyen Ministre, comment il seroit possible autrement, de parer aux inconvéniens qui naissent pour nous de l'union des Etats Unis avec la Grande Bretagne; comment nous pourrons regagner ce que nous avons perdu par notre faute, la prépondérance à laquelle nous avions tant de droits. Une rupture conduiroit-elle à ce but? Non, sans doute; le gouvernement saisiroit avec empressement cette occasion pour éloigner à jamais le peuple de la France, pour le lier plus étroitement avec l'Angleterre. * * *

Il faut, je pense, Citoyen Ministre, ne pas perdre cet objet de vue, et nous rappeller que si la France est agricole, elle est aussi manufacturière, qu'elle a besoin d'exporter le produit de son industrie;

que ce vaste continent présente des débouchés infinis, si elle sait se les assûrer, et qu'y menageant avec soin ses intérêts, elle peut s'approvisionner seule tout le tems où il n'aura tas de manufacture, et le tems est oncore éloigné. Ces diverses considérations viennent donc à l'appui de ma proposition et me la font regarder comme seule admissible dans ce moment surtout, où nous ne devons pas chercher une nouvelle guerre, et où l'honneur et l'intérêt de la nation ne me paroissent pas permettre de garder le silence sur la conduite du gouvernement Américain.

(3) June 20, 1796.

On vient de me procurer une copie des Instructions de Jay à lui données par le Sécrétaire d'Etat, lors de son départ pour l'Angleterre. Je m'empresse de vous les envoyer.

Si vous vous donnez la peine de les comparer avec le Traité que ce Ministre a conclu avec le Ministre Anglais, vous verrez, Citoyen Ministre, qu'il a pris une marche toute opposée à celle qui lui était tracée; et qu'il a souscrit à des conditions qu'il ne devait pas accepter.

Quel motif a pu déterminer Jay à recevoir la loi du Ministre Anglais? Usant de la latitude qui lui était donnée par un des articles de ses Instructions, a-t-il substitué sa volonté individuelle aux volontés bien exprimées de son Gouvernement? L'affection qu'il porte à l'Angleterre a-t-elle triomphé seule de son devoir? la corruption a-t-elle agi sur lui? ou était-il porteur d'instructions secrètes du President ignorées du Sécrétaire d'Etat et connues seulement de Washington et de son Conseil particulier Hamilton? Je serais tenté de le croire, Citoyen Ministre, autrement comment expliquer la contradiction qui éxiste dans la conduite du Président, quand on le voit signer un Traité contraire aux ordres qu'il avait données? Si, conformément à la demande de la Chambre des Représentans, il lui avait remis les Instructions et autres pièces relatives à la mission de Jay, on aurait déjà développé ce mystère; mais j'y parviendrai peut être, si comme on me l'a promis, on me montre la correspondance de Jay avec le Lord Grénville et les dernières Instructions que lui a donné le President. Alors, Citoyen Ministre, je parlerai d'après des faits et non sur de simples conjectures.

Il est inutile, Citoyen Ministre, que j'entre dans aucun détail sur ces Instructions, les réfléxions qu'elles font naître se présentent d'elles-mêmes. Je me bornerai à vous faire remarquer que le Président par l'importance qu'il attache à la paix avec Alger, par les démarches qu'il prescrit à son Envoyé pour arriver à ce but, répond aux vœux des Américains qui tous désirent naviguer dans la Méditerrannée. Notre intérêt nous permet-il, Citoyen Ministre, de leur laisser usurper

un Commerce qui par notre position et nos anciennes liaisons doit nous appartenir exclusivement et que pour la properité de la République nous devons conserver. Je en le crois pas, Citoyen Ministre, mais je me contente de vous présenter seulement cette question dont votre sagesse trouvera la solution la plus avantageuse à notre patrie.

Salut respectueux,

Signé P. A. Adet.

APPENDIX E.

A Map, with its consideration and explanation relating to certain stipulations in the Treaty of 1794.

Consideration of the Map.—An exhaustive search authorizes the statement that no map has ever been made which considered at once the location of the British forts, the disputed boundary lines, and the territory held by the British in 1794. From sources stated in the bibliography enough evidence has been gained to supply a map illustrating these interests.

Ten forts were to be abandoned. Fort Recovery was mentioned by Randolph, Secretary of State, in a letter[127] to John Jay, dated August 18, 1794. It is also mentioned in Stephens' "Pictorial History" as built by General Wayne in 1793 near the scene of the St. Clair disaster.

Great Sodus Fort is located by a letter[127] from Randolph to the same party, dated August 30, 1794.

Fort Miami, on the rapids of the Maumee River, was also mentioned in the same.

Randolph, in a letter[127] addressed to Jay and dated December 19, 1794, objects that Detroit is still held by the British as well as other forts above mentioned.

President Washington in his address[128] to the United States Senate and House of Representatives on December 7, 1796, mentions three other forts which have been evacuated—Oswego, Niagara, and Michilimakinac, or Mackinac.[129]

Fort Oswegatichie on the St. Lawrence River and Point-au-fer and Dutchman's Point on Lake Champlain are mentioned in Jefferson's letter[130] of objections, May 29, 1792, to Hammond, the British consul.

In his letter to the same party on December 15, 1791, Jefferson mentions Fort Erie as one of those to be abandoned, but in his letter

[127] State Papers, Foreign Relations, Vol. I.

[128] Richardson's "Message and Papers of the Presidents."

[129] It was so called in the War of 1812, when it received the appellation, "The American Gibraltar," as one of the strongest positions in the United States.

[130] State Papers, Foreign Relations, Vol. I.

of May 29, 1792, he corrects himself in that Fort Michilimakinac was the one intended.[131] A glance at the map shows the reason for this mistake as well as how slight Jefferson's knowledge of the forts must have been at that time. Fort Erie was a British fort upon British territory.

The boundary question is much easier to deal with. By the Treaty of Peace in 1783 it was stipulated that a line due westward from the Lake of the Woods to the Mississippi River should constitute the northwestern boundary line of the United States. In Jay's letter[130] to Lord Grenville on the 4th of September, 1794, he objects that the northwestern boundary line does not close, as the Mississippi does not extend far enough north to allow a line "due west" from the Lake of the Woods to intersect it. The Mississippi River had not been explored farther than the forty-fifth degree of latitude, or one degree above the Falls of St. Anthony, so a commission was agreed upon for a survey to ascertain the source of the river. Three sources[132] were conjectured: Marshy Lake, near the forty-fifth degree of latitude; White Bear Lake, near the forty-sixth degree; and Red Lake, or Lahontan's Mississippi, near the forty-seventh degree of latitude.

Undoubtedly there was either a mistake in regard to latitude, which is very probable, or in regard to the names of the lakes, which might easily have been changed. Red Lake is on the map but nearer the forty-eighth degree than the forty-seventh degree of latitude. There is a White Bear Lake about the forty-fifth degree, but far too small to be noted as the source of the Mississippi, and also has the main stream of the Mississippi running by it. What is now known as Mille Lacs was probably then called Marshy Lake and is in the forty-sixth degree rather than the forty-fifth degree. Lake Winnibigoshish, forty-seventh degree, is probably the one then designated as White Bear Lake, forty-sixth degree. The reasons for these assumptions are location, size, and the tributary in the case of Mille Lacs, and the main river in the case of Lake Winnibigoshish. Red Lake can be accounted for only in size and possible tributary connection. Big Stone Lake, where Marshy Lake is indicated and questioned, is the only lake near the forty-fifth degree of latitude which has any large connection with the Mississippi, and its consideration as a source of the Mississippi by the surveyors in the last half of the eighteenth century is very doubtful indeed. It must be remembered that the inaccuracies of the maps (Mitchell's) which Mr. Jay and Lord Grenville used were responsible for much of their trouble, and the territory

[131] Lyman in his "American Diplomacy" evidently overlooked this correction. He names Erie as a fort to be abandoned, omitting Great Sodus, Miami, and Recovery.

[132] State Papers, Foreign Relations, Vol. I.

over which they negotiated has been rendered more difficult of study by the civilization and progress of a thrifty country for one hundred and twelve years.

The last question for consideration in the map was the northeast boundary line of the United States. This had been determined upon in the Treaty of 1783 as the St. Croix River, but it was impossible to determine which stream was really the St. Croix. A commission was provided for in Jay's treaty, and brought in its report on the 25th of October, 1798. This report determined that the river previously known as the Scoodiac, or Schoodiac, was the St. Croix River intended in the Treaty of 1783.

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[133] Mr. Holcombe is one of those obliging public citizens to whose knowledge, local enthusiasm, and patriotism I wish to make full acknowledgment for the only authentic information regarding Dutchman's Point. An exhaustive search in the University Library and City Library of San Francisco with the kind assistance given there failed to reveal any information concerning the fort except that it was on Lake Champlain. Mr. Holcombe writes in part:

"PLATTSBURGH, N. Y., Jan. 22, 1906.

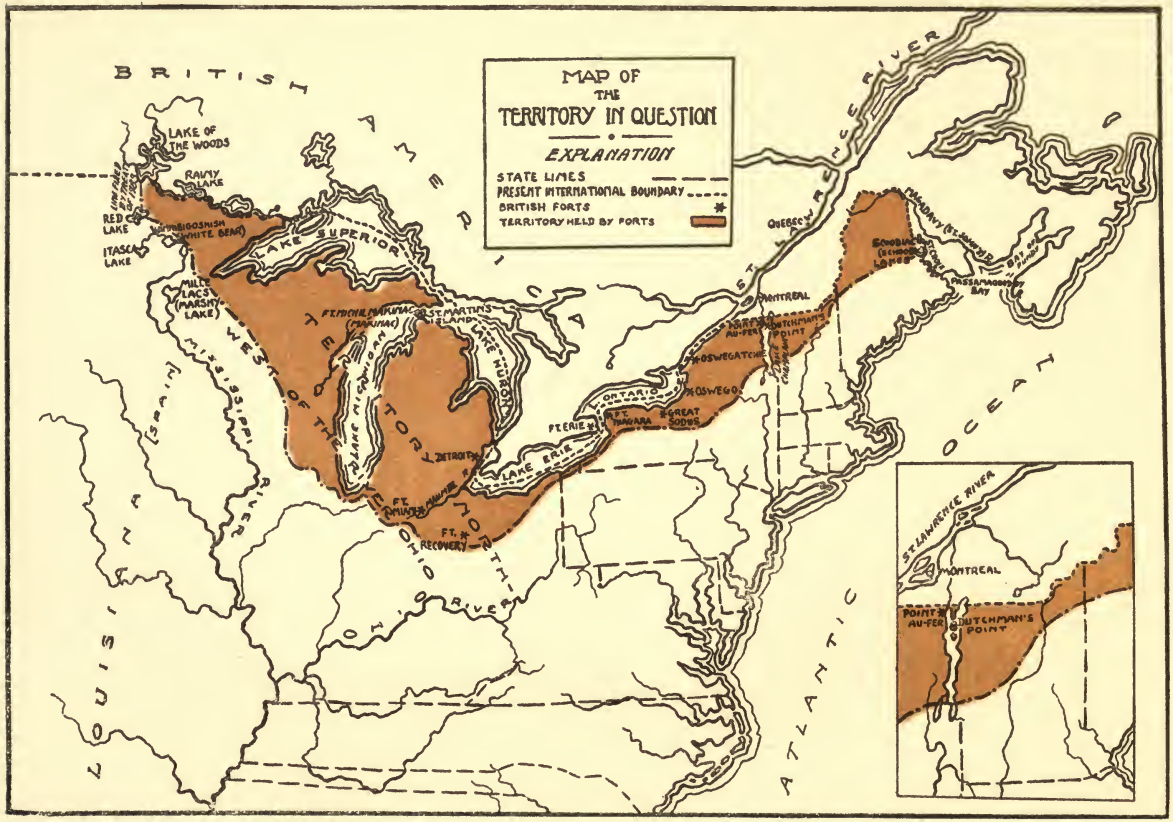
"Mr. Robert Rankin,

DEAR SIR:—In reply to yours of the 8th, would say that I am unable to locate Dutchman's Point exactly, but I think it where there was a blockhouse in the Revolutionary War on the west shore of North Hero (North Island). Point-au-fer is where I have marked it on the map, and it is called by that name to-day. Palmer's History of Lake Champlain refers to Point-au-fer and the Blockhouse as being the two places held by the British after their evacuation of the country."

On the map sent to him he has located the forts as in the small corner map of this essay. He writes:

"Point-au-fer, four miles south of the Canadian line."

"Probable location of Dutchman's Point about twelve miles south of Canadian line on the west shore of North Hero (or North Island)."


MAP OF THE TERRITORY IN QUESTION
EXPLANATION
STATE LINES
PRESENT INTERNATIONAL BOUNDARY
BRITISH FORTS
TERRITORY HELD BY FORTS
BRITISH AMERICA
LAKE OF THE WOODS
RAINY LAKE
RED LAKE
ITASCA LAKE
MILLE LACS (MARSHY LAKE)
LAKE SUPERIOR
WEST OF THE RIVER
TERRITORY NORTH-WEST
LAKE MICHIGAN
LAKE HURON
ST. MARTINS ISLAND
DETROIT
FT. MIAMI
FT. RECOVERY
LAKE ERIE
FT. ERIE
FT. NIAGARA
GREAT SODUS
ONTARIO
OSWEGO
OSWEGATCHIE
FORT AU-FER
DUTCHMAN'S POINT
MONTREAL
QUEBEC
ST. LAWRENCE RIVER
MISSISSIPPI RIVER
OHIO RIVER
LOUISIANA (SPAIN)
ATLANTIC OCEAN
ST. LAWRENCE RIVER
MONTREAL
POINT AU-FER
DUTCHMAN'S POINT